

# ECONOMIC PROBLEMS OF WOMEN

93 Y4  
Ec 7  
W 84  
PT. 1

GOVERNMENT

Storage

Y4  
.Ec 7  
W 84/PT. 1

HEARINGS  
BEFORE THE  
JOINT ECONOMIC COMMITTEE  
CONGRESS OF THE UNITED STATES  
NINETY-THIRD CONGRESS  
FIRST SESSION

PART 1

JULY 10, 11, AND 12, 1973

Printed for the use of the Joint Economic Committee

KSU LIBRARIES



✓  
A 111900 981686



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1973

21-495 O

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402 - Price \$1.55

KANSAS STATE  
UNIVERSITY  
LIBRARY  
MANHATTAN

NY  
P. 33.  
1.79[48W

JOINT ECONOMIC COMMITTEE

(Created pursuant to sec. 5(a) of Public Law 304, 79th Cong.)

WRIGHT PATMAN, Texas, *Chairman*

WILLIAM PROXMIRE, Wisconsin, *Vice Chairman*

HOUSE OF REPRESENTATIVES

RICHARD BOLLING, Missouri  
HENRY S. REUSS, Wisconsin  
MARTHA W. GRIFFITHS, Michigan  
WILLIAM S. MOORHEAD, Pennsylvania  
HUGH L. CAREY, New York  
WILLIAM B. WIDNALL, New Jersey  
BARBER B. CONABLE, Jr., New York  
CLARENCE J. BROWN, Ohio  
BEN B. BLACKBURN, Georgia

SENATE

JOHN SPARKMAN, Alabama  
J. W. FULBRIGHT, Arkansas  
ABRAHAM RIBICOFF, Connecticut  
HUBERT H. HUMPHREY, Minnesota  
LLOYD M. BENTSEN, Jr., Texas  
JACOB K. JAVITS, New York  
CHARLES H. PERCY, Illinois  
JAMES B. PEARSON, Kansas  
RICHARD S. SCHWEIKER, Pennsylvania

JOHN R. STARK, *Executive Director*  
LOUGHLIN F. MCHUGH, *Senior Economist*

ECONOMISTS

WILLIAM A. COX  
JERRY J. JASINOWSKI

L. DOUGLAS LEE

LUCY A. FALCONE  
JOHN R. KARLIK

SARAH JACKSON  
RICHARD F. KAUFMAN  
COURTENAY M. SLATER

MINORITY

LESLIE J. BANDER    GEORGE D. KRUMBHAAR, Jr. (Counsel)    WALTER B. LAESSIG (Counsel)

# CONTENTS

## WITNESSES AND STATEMENTS

TUESDAY, JULY 10, 1973

### *The Economics of Sex Discrimination in Employment*

	Page
Griffiths, Hon. Martha W., member of the Joint Economic Committee (presiding): Opening statement.....	1
Whitman, Hon. Marina, member, Council of Economic Advisers, accompanied by June O'Neill, staff member.....	3
Stein, Hon. Herbert, Chairman, Council of Economic Advisers.....	38
Bergmann, Barbara R., professor of economics and director, Project on the Economics of Discrimination, University of Maryland.....	51
Samuelson, Paul A., professor of economics, Massachusetts Institute of Technology.....	58

WEDNESDAY, JULY 11, 1973

### *Federal Efforts To End Sex Discrimination in Employment*

Griffiths, Hon. Martha W., member of the Joint Economic Committee (presiding): Opening statement.....	73
Brown, Hon. William H., III, Chairman, Equal Employment Opportunity Commission.....	74
DeLury, Hon. Bernard E., Assistant Secretary for Employment Standards, U.S. Department of Labor, accompanied by Carmen R. Maymi, Director, Women's Bureau; George Travers and Doris Wooten, Office of Federal Contract Compliance; and Morag M. Simchak, Employment Standards Administration.....	92
Koontz, Elizabeth Duncan, former Director, Women's Bureau, Department of Labor.....	112
Sandler, Bernice, director, Project on the Status and Education of Women, Association of American Colleges.....	118
Hernandez, Aileen C., former member, Equal Employment Opportunity Commission.....	128

THURSDAY, JULY 12, 1973

### *Women's Access to Credit and Insurance*

Griffiths, Hon. Martha W., member of the Joint Economic Committee (presiding): Opening statement.....	151
Denenberg, Hon. Herbert S., commissioner of insurance, State of Pennsylvania.....	153
Shack, Barbara, assistant director, New York Civil Liberties Union.....	168
Rohde, Steven, member of the staff, Center for National Policy Review, School of Law, Catholic University, testifying for William L. Taylor, director.....	191
Gates, Margaret J., and Jane R. Chapman, codirectors, Center for Women Policy Studies.....	202

## SUBMISSIONS FOR THE RECORD

TUESDAY, JULY 10, 1973

Bergmann, Barbara R.: Prepared statement.....	54
" 'Hidden' Unemployment Among Women".....	70

IV

Samuelson, Paul A.:	
Paper entitled "Economics of Sex: A Discussion"-----	Page 61
Stein, Hon. Herbert:	
Response to additional written questions posed by Representative Griffiths-----	48
Whitman, Hon. Marina, et al.:	
Chapter 4, from the 1973 Economic Report of the President, entitled "The Economic Role of Women"-----	4
Supplement to chapter 4, from the 1973 Economic Report of the President-----	28

WEDNESDAY, JULY 11, 1973

Brown, Hon. William H., III:	
Prepared statement-----	79
EEOC guidelines on discrimination because of sex-----	83
DeLury, Hon. Bernard E., et al.:	
Prepared statement-----	93
Letter of response to Representative Griffiths' request to supply for the record information concerning employment by sex in the Office of Federal Contract Compliance, information on money budgeted for the Citizens' Advisory Council on the Status of Women, and information on resource requirements for the Employment Standards Administration-----	108
Letter of response to Representative Griffiths' request to supply for the record statistical data about the Department's record of enforcement under the Equal Pay Act of 1963, as well as a report of the Department's activity under Executive Order 11246, as amended-----	109
Griffiths, Hon. Martha W.:	
Letter to Hon. Bernard E. DeLury, Assistant Secretary for Employment Standards, Department of Labor, requesting statistical data about the Department's record of enforcement under the Equal Pay Act of 1963, as well as a report of the Department's activity under Executive Order 11246, as amended-----	109
Hernandez, Aileen C.:	
Prepared statement-----	133
Sandler, Bernice:	
Prepared statement-----	122

THURSDAY, JULY 12, 1973

Denberg, Hon. Herbert S.:	
Prepared statement-----	158
Letter of response to Representative Griffiths' seven questions pertinent to insurance-----	218
Gates, Margaret J., and Jane R. Chapman:	
Prepared statement-----	203
Griffiths, Hon. Martha W.:	
Letter to Hon. Herbert S. Denenberg, commissioner of insurance, State of Pennsylvania, posing seven questions pertinent to insurance-----	217
Rohde, Steven:	
Prepared statement of William L. Taylor-----	195
Shack, Barbara:	
Prepared statement-----	173

# ECONOMIC PROBLEMS OF WOMEN

TUESDAY, JULY 10, 1973

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:12 a.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths and Widnall.

Also present: John R. Stark, executive director, Lucy A. Falcone, Sharon S. Galm, L. Douglas Lee, and Courtenay M. Slater, professional staff members; Michael J. Runde, administrative assistant; George D. Krumbhaar, Jr., minority counsel; and Walter B. Laessig, minority counsel.

## OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. The committee will come to order.

I would like to point out that in the years that I have been a member of the Joint Economic Committee I do not recall the Chairman of the Council of Economic Advisers ever failing to appear promptly before this committee. I understand that Mr. Stein was at the White House, that he has left the White House, and that he will be here to answer questions.

Therefore, I would like to begin with an announcement and when I have finished, Mrs. Whitman, if you would like, you may read the statement. And when Mr. Stein appears we will ask him questions.

Today the Joint Economic Committee begins 7 days of hearings on economic problems of women. While much has been said and written about discrimination against women in the last few years, neither Congress nor any administration has ever really considered the cost to the Nation, nor to women individually or as groups, of the economic discrimination against women. During these hearings we will focus on economic discrimination—in employment, in earnings, in credit, insurance, taxes, social security and transfer programs. In some of these areas Congress has passed legislation to correct discrimination, and it remains for these laws to be enforced by the executive branch. In many areas, however, Congress itself is at fault, for not giving priority to legislation which would correct abuses against women.

During the course of these hearings we expect to gather factual evidence and expert opinions necessary for formulation of a comprehensive economic policy which includes women as first-class citizens. Women have been unfairly treated as secondary workers and second-

class citizens for too long. We must change our laws to make work done by women the economic equal of work done by men. Who decides, and why, that the value of the work done in the business world is more important if done by men than if done by women?

We expect to focus today on the economics of employment discrimination. It is a little recognized fact that most women work because of economic need and not to satisfy their own whims. Two-thirds of all women in the labor force are either single, divorced, separated, or have husbands who earn less than \$7,000 a year. These women, by necessity, have a strong attachment to the labor force. They don't work for pin money and they can't afford a dilettante's approach to entering and leaving the labor force. But how are such facts treated by the business and political worlds?

Women experience rates of unemployment substantially above males, and over time the ratio of female unemployment to male unemployment has worsened. In 1972, the unemployment rate for women was 6.6 percent compared to 4.9 percent for men. This means that 2.2 million women were unable to find jobs; another 1.2 million women who wanted full-time work could find only part-time jobs. There were also 500,000 women who became so discouraged about the possibility of finding a job that they dropped out of the labor force entirely. That there are twice as many female discouraged workers as males is explained at least in part by the lack of job opportunities for women.

Even those women who are able to find jobs work primarily in women's occupations. The median school years completed is the same for the female labor force as for the male labor force. Yet with the same educational background as men, women have different jobs, usually with less responsibility and less pay. For example, among college graduates only 5 percent of all employed women are managers compared to 20 percent of all employed males. What is even more discouraging is that the percent of women in many occupations has barely changed in the last 20 years. For instance, in 1950, only 4.1 percent of all lawyers and judges were women—by 1970 women's position had barely improved to 4.9 percent of all lawyers and judges. Among professional and technical workers the percent of women has remained the same for the last 20 years, while in the category of clerical workers the percent of women workers has risen from 62 to 74 percent. In spite of the legislation and public discussion devoted to this subject, the occupational distribution of jobs by sex has shown no improvement in the last 20 years. I hope our witnesses discuss the reasons for this lack of improvement and suggest what further steps need to be taken to increase the number of women professionals, of women managers, of women skilled workers.

Furthermore, women who are employed in the same occupation as men receive only a fraction of men's salaries. Why is a woman worth only 57 percent of a man? Women earn less than 60 percent of their male counterparts and in some occupations, such as sales workers, women earn only 42 percent as much as men. Among older workers the differential between men and women is even greater than among younger workers.

Over the last few years, many economists have argued that the trade-off between inflation and unemployment has worsened—that for a given level of inflation we now must accept a higher rate of unem-

ployment. Increasingly I have heard the argument used that this worsening trade-off is due to the higher number of women and teenagers in the labor force. Rather than proposing ways to better prepare women and teenagers for work, many politicians and economists seem willing to accept unemployment rates of 5 and 6 percent as given. Are we now going to start making women the scapegoats for high unemployment and high inflation? If more women are unemployed, isn't part of the reason that they are forced by discriminatory hiring practices into already overcrowded occupations?

Finally, I want to stress the correlation between unemployment among women and poverty. As the number of families in poverty decreases, we have witnessed an increase not only in the percent of the total number of poverty families that are headed by females, but in the absolute number as well. In 1959, women headed 23 percent of all poverty families; by 1972 women headed 43 percent of these families; and among poverty-level black families, 64 percent were headed by women in 1972. Eighteen percent of women heading poverty families who are looking for work are unable to find jobs. The oft-repeated phrase that women work only for pin money must sound cruel indeed to these mothers struggling to bring their families out of a poverty-level existence. How many of these families might pass the poverty threshold if equal pay and equal job opportunity were available to these women heads-of-household? Discrimination against a woman is discrimination against a family supported or partially supported by a woman. These are some of the issues I hope our witnesses will discuss this morning.

And in the absence of Mr. Stein—and I do hope that this is not really a reflection of the Nixon administration's lack of interest in this problem—Mrs. Whitman, will you please proceed?

**STATEMENT OF HON. MARINA WHITMAN, MEMBER, COUNCIL OF ECONOMIC ADVISERS, ACCOMPANIED BY JUNE O'NEILL, STAFF MEMBER**

Mrs. WHITMAN. Thank you, Mrs. Griffiths.

I might say that the intention was that I would be reading the testimony in any case. But I do know that Mr. Stein had planned to be here on time, and it was for that reason that he was not in touch with you on that subject.

I would like to introduce to you Mrs. June O'Neill of the staff of the Council, who is the staff member who has for some time now been doing the bulk of the work in the area of the economics of women.

We are very pleased to participate in this series of hearings on so important a topic. We are submitting chapter 4 on "The Economic Role of Women"—and its supplement—from the 1973 Economic Report of the President, which contains a considerable amount of detail about various aspects of women's labor force experience, for insertion into the record, with your permission.

Representative GRIFFITHS. Yes, we will insert that in the record at this point.

[The documents referred to follow:]

## CHAPTER 4

## The Economic Role of Women

ONE OF THE MOST important changes in the American economy in this century has been the increase in the proportion of women who work outside the home. This increase is the most striking aspect of the expansion of the role of women in the economy.

The addition of millions of women to the labor force has contributed substantially to the increase of total output. This is most obvious if we focus attention on the output that is measured and included in the gross national product (GNP). But even if we subtract from the contribution of working women to the GNP the value of the work they would have done at home, there has been an addition to total output. Most of the benefits of this additional output accrue to the women who produce it, and to their families. There are, however, also direct benefits to the society at large, including the taxes paid on the women's earnings.

Concern is sometimes expressed that the increase in women in the labor force will reduce the employment opportunities for men and raise their unemployment. There is no reason to think that would happen and there is no sign that it has happened. The work to be done is not a fixed total. As more women enter employment and earn incomes they or their families buy more goods and services which men and women are employed to produce. A sudden surge of entrants into the labor force might cause difficulties of adjustment and, consequently, unemployment, but the entry of women into the labor force has not been of that character.

Women work outside the home for the same reasons as men. The basic reason is to get the income that can be earned by working. Whether—for either men or women—work is done out of necessity or by choice is a question of definition. If working out of necessity means working in order to sustain biologically necessary conditions of life, probably a small proportion of all the hours of work done in the United States, by men or women, is necessary. If working out of necessity means working in order to obtain a standard of living which is felt by the worker to be desirable, probably almost all of the work done by both men and women is necessary.

The Employment Act of 1946 sets forth a goal of "maximum employment." We understand that to mean employment of those who want to work, without regard to whether their employment is, by some definition,

necessary. This goal applies equally to men and to women. The Act also sets forth a goal of "maximum production." We understand the meaning of that goal which is relevant to the present context to be that people should be able to work in the employments in which they will be most productive. That also applies equally to men and women.

Although the goals apply equally to men and women, some of the obstacles to their achievement apply especially to women. Women have gained much more access to market employment than they used to have, but they have not gained full equality within the market in the choice of jobs, opportunities for advancement, and other matters related to employment and compensation. To some extent the cause of this discrepancy is direct discrimination. But it is also the result of more subtle and complex factors originating in cultural patterns that have grown up in most societies through the centuries. In either case, because the possibilities open to women are restricted, they are not always free to contribute a full measure of earnings to their families, to develop their talents fully, or to help achieve the national goal of "maximum production."

#### ADVISORY COMMITTEE ON THE ECONOMIC ROLE OF WOMEN

Recognizing the urgency of these problems and the importance of leadership to change the attitudes which underlie them, the President announced in September the formation of the Advisory Committee on the Economic Role of Women. The committee will meet periodically with the Chairman of the Council of Economic Advisers, providing a forum for the interchange of information, ideas, and points of view. This interchange will increase the Council's own expertise on the economics of women. Because the function of the Council of Economic Advisers is to advise the President on a wide variety of economic issues, its association with the committee will ensure that the interests of women will be represented in economic policy decisions.

With these goals in mind, in January 1973 the Chairman of the Council of Economic Advisers asked 21 men and women representing diverse areas of expertise to serve on the committee. They include officials from the Federal Government agencies whose activities are important to the progress of women, representatives from business, finance, education, and other private institutions, and specialists on the economic problems of women from sociology, psychology, economics, and the law. Among the topics that the committee will explore are job training and counseling in the schools, special problems of minority women, problems related to child care, women's performance at work, the extent of job discrimination, women's access to credit, and legislative action on taxes and social security that may have a different effect on women than on men.

Another, more fundamental, issue affecting women in the economy underlies many of the others. The roles played by women and men have been

sharply differentiated. It is obvious that only women are capable of child-bearing. But along with this biologically determined role, women have by tradition come to assume primary responsibility for child care and home management, while men have primary responsibility for the family's financial support. Until very recently this division of labor within the family has had such general acceptance as to impose limitations on women's work outside the home. The way in which the economic role of women evolves thus hinges on the most fundamental societal patterns, and the extent to which social action can and should influence further change in these patterns will be one of the most difficult and important questions the committee must consider.

By way of an introduction to the problem, this chapter looks at job-related aspects of the economic role of women. The committee will, of course, deal with a much broader range of topics.

### PARTICIPATION IN THE LABOR FORCE

In 1900 about 20 percent of all women were in the work force (Table 21). In the succeeding decades this percentage hardly increased, reaching about 25 percent by 1940. With World War II, however, the movement rapidly accelerated, and by 1972 the percentage of women 16 years and older in the work force had risen to 43.8. Single women and women widowed, divorced, or separated, have always had higher labor force participation rates than married women living with their husbands. By 1950, the participation of women in the two former groups had already reached levels close to those of today. Thus, the upward trend in labor force participation since World War II has been due almost entirely to the

TABLE 21.—*Women in the labor force, selected years, 1900-72*

Year	Women in labor force (thousands)	Women in labor force as percent of	
		Total labor force	All women of working age
1900.....	5,114	18.1	20.4
1910.....	7,889	20.9	25.2
1920.....	8,430	20.4	23.3
1930.....	10,679	22.0	24.3
1940.....	12,845	24.3	25.4
1945.....	19,270	29.6	35.7
1950.....	18,412	28.8	33.9
1955.....	20,584	30.2	35.7
1960.....	23,272	32.3	37.8
1965.....	26,232	34.0	39.3
1970.....	31,560	36.7	43.4
1972.....	33,320	37.4	43.8

Note.—Data for 1900 to 1940 are from decennial censuses and refer to a single date; beginning 1945 data are annual averages.

For 1900 to 1945 data include women 14 years of age and over; beginning 1950 data include women 16 years of age and over.

Labor force data for 1900 to 1930 refer to gainfully employed workers.

Data for 1972 reflect adjustments to 1970 Census benchmarks.

Sources: Department of Commerce, Bureau of the Census, and Department of Labor, Bureau of Labor Statistics.

changed behavior of married women (Table 22). The first to respond were the more mature married women beyond the usual childbearing years. More recently there has also been a sharp upturn in the labor force participation of younger married women.

The record for men has tended to run in the opposite direction. A secular reduction in time spent in paid work over most men's lifetimes has taken place: A man spends more years at school and enters the labor force later than formerly; he retires earlier, works fewer hours a week, and has longer vacations. Of course these changes have also affected women, but for them the increase in years worked has far outweighed the other work-reducing factors.

In one very important respect, however, the working life patterns of men and women have not merged. The typical man can expect to be in the labor force continuously, for an unbroken block of some 40 years between leaving school and retirement. Of men in the 25-54 year age group, 95.2 percent were in the labor force in 1972. For most women, this continuity in participation is the exception rather than the rule.

TABLE 22.—*Labor force participation rates of women by marital status and age, 1950, 1960 and 1972*

[Percent <sup>1</sup>]

Marital status and year	Total	Age					
		Under 20 years	20-24 years	25-34 years	35-44 years	45-64 years	65 years and over
<b>Single:</b>							
1950 .....	50.5	26.3	74.9	84.6	83.6	70.6	23.8
1960 .....	44.1	25.3	73.4	79.9	79.7	75.1	21.6
1972 .....	54.9	41.9	69.9	84.7	71.5	71.0	19.0
<b>Married, husband present:</b>							
1950 .....	23.8	24.0	28.5	23.8	28.5	21.8	6.4
1960 .....	30.5	25.3	30.0	27.7	36.2	34.2	5.9
1972 .....	41.5	39.0	48.5	41.3	48.6	44.2	7.3
<b>Widowed, divorced, or separated:</b>							
1950 .....	37.8	(?)	45.5	62.3	65.4	50.2	8.8
1960 .....	40.0	37.3	54.6	55.5	67.4	58.3	11.0
1972 .....	40.1	44.6	57.6	62.1	71.7	61.1	9.8

<sup>1</sup> Labor force as percent of noninstitutional population in group specified.

<sup>2</sup> Not available.

Note.—Data relate to March of each year.

Data for 1950 and 1960 are for women 14 years of age and over; data for 1972 are for women 16 years of age and over.

Source: Department of Labor, Bureau of Labor Statistics.

## THE HISTORICAL PATTERN

What are the causal factors that induced women to enter the labor force? One might have expected that the strong increases in husbands' real incomes which occurred during the period would have provided an incentive to women not to enter the labor force. This seeming puzzle is resolved, however, when one considers that by entering the labor force women did not leave a life of leisure for work, but rather changed from one kind of

work, work at home, to another kind of work, work in the market. The incentive for women to make this dramatic occupational change came from several developments which made paid work outside the home the increasingly more profitable alternative.

Rapidly rising earnings and expanded job opportunities for women gave a strong impetus to the change. The expansion of job opportunities for women was undoubtedly influenced by the expansion of the service sector of the economy, where employment increased by 77 percent from 1950 to 1970, compared to the increase of 26 percent in the goods-producing industrial sector over the same period. Women have always been more heavily represented in services than in industry, since the service sector offers more white-collar employment and provides more opportunities for part-time work, an especially important feature for women with small children. On the other hand, the increasing supply of women workers perhaps itself contributed to the rapid expansion in the service sector.

The increase in women's educational attainments has also helped to raise the amount they can earn by working. Education may make women more productive in the home, that is, more efficient housekeepers, consumers, and mothers, but education appears to increase still more their productivity in work outside the home. Women with more education earn more, and they are more likely than less educated women to seek work in the market.

Because life expectancy has increased considerably over the century (and more for women than for men), and because most women complete their childbearing at a younger age, women can look forward with more certainty to a longer uninterrupted span of years in the labor force. This lengthening of a woman's expected working life is significant because it increases her return on her investment in training and education: the greater the number of years in which to collect the return the greater is the return.

These increases in the income a woman could potentially earn meant essentially that time spent producing goods and services at home was coming at a higher and higher cost in terms of the income foregone by not working in the market. It made sense then to buy available capital equipment (such as washing machines) which would substitute for some of the housewife's time and free her to go to work. And changes in technology which lowered the cost and increased the array of time-saving devices facilitated the substitution.

The most difficult home responsibility to find a good substitute for is child care; and, although the labor force participation of women with children under 6 years has increased from 12 percent in 1950 to 30 percent in 1971, child-rearing is probably the major factor causing some women to interrupt and others to curtail their careers.

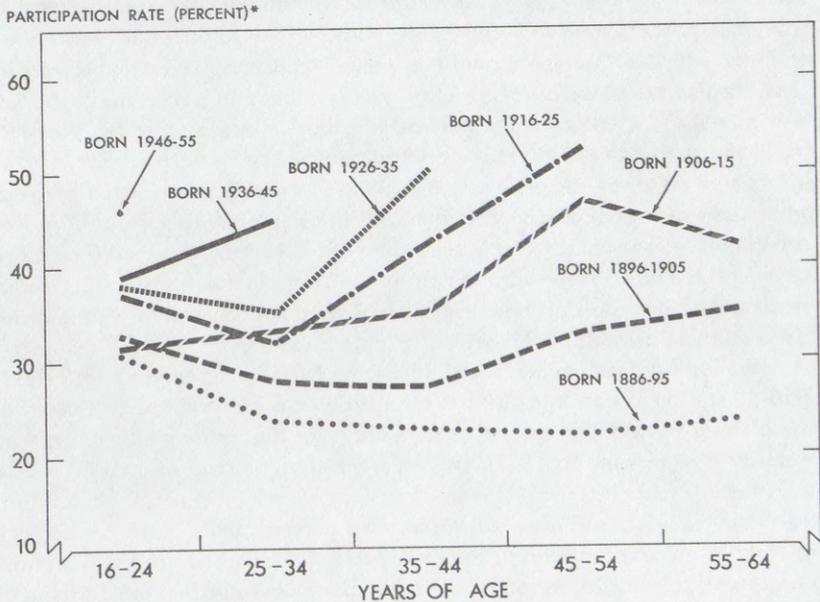
The long-term decline in the average number of children in the family has undoubtedly had a strong influence on the proportion of women entering the labor force. Advances in birth control techniques permit parents not only to reduce the number of births but also to control their timing to

suit a mother's working career. Declines in infant and child mortality may also have encouraged a reduction in births by increasing the parents' expectation that all their children would survive to adulthood. On the other hand, reductions in family size may themselves be influenced by the desire of women to work.

Childbearing has a very noticeable effect on the patterns of women's labor force participation by age. Based on census data, Chart 9 traces the lifetime changes in labor force participation by groups of women born at different times, the earliest group consisting of women born between 1886 and 1895. The chart therefore simulates the actual work history of particular cohorts of women followed longitudinally. According to this chart, the various forces in the economy that have induced women to work have generally had a more powerful effect on women beyond the childbearing ages

Chart 9

### Labor Force Participation Over a Working Life of Cohorts of Women Born in Selected Time Intervals, 1886-1955



\*TOTAL LABOR FORCE AS PERCENT OF TOTAL NONINSTITUTIONAL POPULATION IN GROUP SPECIFIED.  
 NOTE: FOR WOMEN BORN BETWEEN 1886 AND 1915, THE FIRST AGE PLOTTED IS 14-24 YEARS. COHORTS REACH EACH AGE INTERVAL ACCORDING TO THE MIDPOINT OF THEIR BIRTH YEARS. THUS, THE COHORT BORN 1886-95 REACHED AGES 25-34 IN 1920 AND AGES 55-64 IN 1950; THE COHORT BORN 1916-25 REACHED AGES 25-34 IN 1950 AND AGES 45-54 IN 1970.  
 SOURCE: DEPARTMENT OF COMMERCE.

than on younger groups. Those increases in labor force participation that have occurred for groups of women reaching the childbearing ages of 20-34 years have been closely associated with declining fertility rates. Thus labor force participation for the group reaching 25-34 years increased substantially from 1930 to 1940, and again between 1960 and 1970, while there was a decline between 1940 and 1950 in the participation of those reaching this age group—the baby boom mothers. Whether the young women now in their twenties have simply postponed having children and will later drop out of the labor force or whether many will continue to work, choosing to have small families or remain childless is, of course, a question of great interest.

#### THE WORKING WOMAN TODAY

Although the decisions of individual women to work outside the home are undoubtedly based on many different factors, there are some economic factors which seem to be of overriding importance. The necessity to support oneself or others is one obvious reason and, not surprisingly, adult single women and women who have been separated from husbands or widowed are highly likely to work.

The increase in earnings opportunities, which proved to be such a powerful factor influencing the secular growth of women's participation in the labor force, is a similarly powerful factor influencing the pattern of women's participation at any given time. Thus, education and other training which affect the amount a woman can earn are strongly related to women's work patterns. The importance of education is such that, whether a woman is single, married or separated, the more education she has, the more likely she is to work. One striking exception to this pattern is that, among mothers of children under 6 years old, there is scarcely any relation between education and labor force participation. Thus, the rearing of children of preschool age causes all women, regardless of education, to curtail their work outside the home. However, the drop in participation during this child-rearing period is most pronounced for highly educated women who in other circumstances have much higher participation rates.

Although for most women the childbearing period has been reduced, child-bearing still means an interruption of outside work. A longitudinal survey of the lifelong work experience of women indicates that among all women who were 30-44 years old in 1967, only 7 percent had worked at least 6 months out of every year since leaving school. Among married women with children the proportion was still lower, dropping to 3 percent. By contrast, 30 percent of childless married women in the same group had worked at least 6 months out of every year. Information on job tenure collected by the Bureau of Labor Statistics illustrates much the same phenomenon. As of January 1968, continuous employment in their current job came to 2.4 years (the median) for women and 4.8 years for men. Job tenure increases with age for both men and women. At ages 45 and over the median was 12.7 years for

men and 6.6 years for women. Since women tend to change jobs less frequently than men, their shorter time spent on any given job is the result of a higher propensity to leave the labor force at least temporarily. In 1964 a survey of women who had dropped out of the labor force in 1962 or 1963 and had not yet reentered was undertaken by the Labor Department in an effort to find out why they had left. Pregnancy was most frequently cited as the primary reason—by 74 percent of the 18- to 24-year-olds and 56 percent of the 25- to 34-year-olds.

Among married women, husband's income does not have a very pronounced effect on work patterns. The median annual income of husbands with working wives was \$8,070 in 1971 compared to \$8,330 for husbands of wives not in the labor force. Only when husbands' incomes reach the \$10,000 and over category does wives' participation decline to any noticeable extent. However, many other things vary with husbands' incomes, such as wives' education and age as well as family size. These other factors are sufficiently important to obscure the simple relation between husband's income and a wife's tendency to work. It should be noted, however, that during a time of hardship, such as when a husband experiences a prolonged spell of unemployment, wives who usually do not work may be compelled to work. Thus, the labor force participation of women with unemployed husbands is generally above that of women with employed husbands.

Although the probability that a black woman will work seems to vary with education and presence of children in much the same way as it does for all women, there is one very striking difference: the labor force participation of black women is higher. Particularly pronounced differences are observed when the comparison of labor force participation is confined to married women living with their husbands. In March 1971, about 53 percent of black wives were in the labor force compared to 40 percent of white wives. One important reason why this difference prevails may be that the earnings of black wives are closer to their husbands' than is the case among white married couples. In 1971 black married women who worked year-round, full-time earned 73 percent as much as black married men who worked year-round, full-time. Among whites the percentage was only 51 percent. Behind these relationships is the fact that black men earn considerably less than white men, while black women's earnings are much closer to white women's earnings.

## UNEMPLOYMENT

Women have generally experienced more unemployment than men and this differential has been more pronounced in recent years (Table 23). However, the source of women's unemployment differs from that of men's, and this makes a comparison of unemployment differences more complex than might appear.

TABLE 23.—Unemployment rates by sex and age, selected years, 1956–72

[Percent]

Sex and age	1956	1961	1965	1969	1972
All workers.....	4.1	6.7	4.5	3.5	5.6
Men.....	3.8	6.4	4.0	2.8	4.9
16–19 years.....	11.1	17.1	14.1	11.4	15.9
20–24 years.....	6.9	10.8	6.4	5.1	9.2
25–54 years.....	3.0	5.1	2.7	1.6	3.1
55 years and over.....	3.5	5.7	3.3	1.9	3.3
Women.....	4.9	7.2	5.5	4.7	6.6
16–19 years.....	11.2	16.3	15.7	13.3	16.7
20–24 years.....	6.3	9.8	7.3	6.3	9.3
25–54 years.....	4.1	6.2	4.3	3.5	4.9
55 years and over.....	3.3	4.4	2.8	2.2	3.4

<sup>1</sup> Unemployment as percent of civilian labor force in group specified.

Source: Department of Labor, Bureau of Labor Statistics.

Some of the difference arises from the way people are classified in our unemployment statistics. A person with a job is not classified as unemployed even though he or she may be searching for another job. However, work at home is not counted as a job. Thus, a woman who may in a real sense be clearly employed in the home while she searches for a job, will be counted as unemployed, unlike the man who searches while on his job.

Most adult men are continuously in the labor force and therefore become unemployed because they have either quit or lost their jobs (Table 24). For women, the picture is different: labor force participation is frequently interrupted, sometimes for several years, but sometimes just for several weeks during the year. Thus, although 59.8 percent of the women 24–54 years old were in the labor force at one time or another during 1971, only 38.2 percent were in the labor force for 50–52 weeks during the year. This high rate of labor force turnover generates unemployment, and it is not surprising to find that in both the tight labor market of 1969 and the looser labor market of 1972 a considerable portion of unemployed women were

TABLE 24.—Distribution of unemployment of adult men and women by reason for unemployment, 1969 and 1972

[Percent]

Reason for unemployment	Men 20 years and over		Women 20 years and over	
	1969	1972	1969	1972
Total unemployment.....	100.0	100.0	100.0	100.0
Separated from a job.....	74.8	75.3	49.9	55.7
Job losers.....	57.8	62.6	33.0	39.4
Job leavers.....	17.0	12.7	16.8	16.3
Labor force entrants.....	25.2	24.6	50.2	44.3
Reentrants.....	22.4	21.6	44.8	39.4
New entrants.....	2.8	3.1	5.5	4.9
Unemployment rate.....	2.1	4.0	3.7	5.4

Note.—Detail may not add to totals because of rounding.

Source: Department of Labor, Bureau of Labor Statistics.

labor force entrants (Table 24). People entering or reentering the labor force tend, however, to be unemployed for relatively short periods, and this is one of the reasons why the duration of unemployment is in general shorter for women than for men (Table 25).

Table 25.—Unemployment of adult men and women by duration and reason, 1972

Sex, age, and reason	Total unemployment (thousands)	Percent of total unemployment	
		Unemployment of less than 5 weeks	Unemployment of 15 weeks and over
Men 20 years and over.....	1,928	37.0	31.6
Lost last job.....	1,207	33.6	35.3
Left last job.....	245	44.9	24.9
Reentered labor force.....	416	41.7	25.4
Never worked before.....	59	39.0	28.8
Women 20 years and over.....	1,610	48.4	22.8
Lost last job.....	635	35.6	33.4
Left last job.....	262	50.0	19.2
Reentered labor force.....	635	59.8	14.4
Never worked before.....	79	55.7	16.5

Note.—Detail may not add to totals because of rounding.

Source: Department of Labor, Bureau of Labor Statistics.

In order to know what significance to attach to the observation that the greater unemployment of women appears to be related to their greater labor force turnover, it is of course necessary to know more about the causes of the turnover. Some have stressed that excessive labor force turnover indicates a poor job market. According to this view, women drop out of the labor market because lack of opportunities has discouraged them from continuing the search. Evidence for this point of view is cited from Labor Department surveys, which indicate that some of those women out of the labor force are there because they do not believe they could find work. In 1972, 525,000 women or 1.2 percent of those out of the labor force were reported in this category.

Another school of thought, however, stresses that the labor force turnover of women and the unemployment it generates is largely induced by factors external to the current labor market, such as the uneven pressures of home responsibilities. Several kinds of evidence support this point of view. Unemployment among women appears to be related to the nature of home responsibilities. For example, in 1971 the unemployment rate for married women with children under 3 years was 11.7 percent, compared to the rate of 4.5 percent for married women with no children under 18 years. Moreover, on numerous surveys women cite pregnancy, home responsibilities, or husband's relocation as primary reasons for leaving the job or the labor force.

It would of course be interesting to know more about the unemployment experience of women who do remain continuously in the labor force. Some evidence from the Labor Department's longitudinal survey indicates that women who were in the labor force in both 1967 and 1969 had considerably lower unemployment in 1969 than those who were in the labor force in 1969 but not in 1967. The unemployment rate in 1969 for the group who were also in the labor force 2 years previously was 2.9 percent, compared to the rate of 6.9 percent for the women who were in the labor force only in 1969. However, this was still above the rate of 2.1 percent for men 20 years old and over in 1969, as measured by the household survey.

Although movement in and out of the labor force is probably the most important factor leading to higher unemployment for women compared to men, two other factors seem to be important. Women with less time on a job and in whom the employer had made negligible training investments are more vulnerable to layoffs. Finally, one additional factor which doubtless contributes to unemployment of married women is the difficulty in maximizing employment opportunities for both the husband and the wife. A wife seldom is free to migrate to wherever her own prospects are best.

It is important to emphasize, because the point is often misunderstood, that to explain the unemployment of women is not to excuse it or belittle it or to place blame on the women who are unemployed. The unemployment of women who seek work is costly, to themselves, their families, and the Nation. Our goal should be to reduce this unemployment wherever that can be done by means which are not themselves more costly. Some unemployment entails more loss for the workers involved and to the economy as a whole than other; some is more amenable to correction by the persons directly affected than other unemployment. But these distinctions do not run along sex lines.

#### THE WIDENING IN THE REPORTED MALE-FEMALE UNEMPLOYMENT DIFFERENTIAL

During the 1960's the differential in reported unemployment between women and men widened. Two factors may help to explain the change. The first has to do with changes in the unemployment survey questionnaire introduced in 1967.

Persons are classified as unemployed if they have not worked during the survey week, were available to work during the survey week, and had made specific efforts to find a job such as looking in the "want-ads" section of the newspaper or going to an employment agency. Prior to 1967 the period of jobseeking efforts was not specified, and it is believed that many respondents interpreted the question narrowly to mean that one had to have looked for a job in the week just prior to the survey. In 1967 the unemployment question was changed by specifying 4 weeks preceding the survey as the point of reference. Data from samples taken on both the old and new

basis are available for 1966. In that year the unemployment rate for women aged 20 years or older was 0.4 percentage points higher on the new basis than on the old. This increase in the rate for women as a result of the change in the questionnaire has been interpreted as reflecting the likelihood that the jobseeking activities of women are more intermittent. As a result of lengthening the reference period to 4 weeks, persons who had briefly looked for work but who were not actively seeking work by the time of the survey week would be added to the unemployed under the new definition.

Although the reported unemployment of some men may also have been increased as a result of the effective lengthening of the unemployment reference period, other changes in the questionnaire in 1967, which were evidently unimportant for women, seemed to reduce the reported unemployment of men. Indeed these changes were of sufficient importance that the net effect was to lower the unemployment rate for men 20 years old and over by 0.3 percentage points. The unemployment rate for men was evidently lowered for two reasons: By a reclassification from unemployed to employed of persons absent from work because of a vacation or a labor dispute but at the same time looking for work; and by the fact that persons stating that they had given up the search for work were no longer counted as unemployed.

The 1966 samples indicate that as a result of the changes in the unemployment questionnaire, which increased the rate for women and lowered the rate for men, the reported male-female unemployment differential, comparing men and women 20 years old and over, increased from 1.3 percentage points to 2.0 percentage points. We cannot, of course, be sure that effects of the same precise magnitude have persisted ever since the new definitions were substituted in 1967. However, the definitional change has undoubtedly contributed to a wider unemployment differential since the late 1960's.

Another factor contributing to the widening of the unemployment differential may be the rapid increase in the labor force participation of women during the 1960's, since its effect was to increase the proportion of women entering or reentering the labor force, with an accompanying increase in unemployment.

#### EDUCATION AND THE OCCUPATIONAL DISTRIBUTION

Some of the hesitancy of women to enter or to stay in the labor force is undoubtedly the result of societally determined factors that restrict the possibilities open to them. The low representation of women in positions of responsibility is striking. Despite gradual gains, progress has not been sufficient to alter the picture significantly (Table 26). Exactly how much of this situation has been imposed on women because of prejudice and how much of it derives from a voluntary adjustment to a life divided between home responsibilities and work remains obscure. The existence of discriminatory

TABLE 26.—*Women as a percent of persons in several professional and managerial occupations, 1910-70*

[Percent]							
Occupational group	1910	1920	1930	1940	1950	1960	1970
Clergymen.....	0.6	1.4	2.2	2.4	4.0	2.3	2.9
College presidents, professors, and instructors <sup>1</sup> .....	18.9	30.2	31.9	26.5	23.2	24.2	28.2
Dentists.....	3.1	3.3	1.9	1.5	2.7	2.3	3.5
Editors and reporters.....	12.2	16.8	24.0	25.0	32.0	36.6	40.6
Engineers.....	(2)	(2)	(2)	.4	1.2	.8	1.6
Lawyers and judges.....	.5	1.4	2.1	2.5	3.5	3.5	4.9
Managers, manufacturing indus- tries.....	1.7	3.1	3.2	4.3	6.4	7.1	6.3
Physicians.....	6.0	5.0	4.4	4.7	6.1	6.9	9.3

<sup>1</sup> Data for 1920 and 1930 probably include some teachers in schools below collegiate rank. The Office of Education estimates the 1930 figure closer to 28 percent.

<sup>2</sup> Less than one tenth of 1 percent.

Note.—Data are from the decennial censuses. Data for 1910 and 1920 include persons 10 years of age and over; data for 1930 to 1970 include persons 14 years of age and over.

Source: Department of Commerce, Bureau of the Census.

barriers may discourage women from seeking the training or adopting the life style it would take to achieve a responsible and highly demanding job. On the other hand, women who expect to marry and have children and who also put their role at home first are subject to considerable uncertainty about their future attachment to the labor force. In the latter case, incentives to train extensively for a career would be few; and, once such women started working, the restrictions imposed by home responsibilities could limit their ability to take a job requiring long hours or the intensive commitment that most high-status positions demand. At the same time, changes in the accepted social roles of men and women would alter current patterns if they changed women's expectations about their future in the labor force.

For whatever reasons, from school onward the career orientation of women differs strikingly from that of men. Most women do not have as strong a vocational emphasis in their schooling; and for those who do, the preparation is usually for a stereotyped "female" occupation.

Although the probability of graduating from high school has been somewhat greater for women than for men, it is less probable that a woman will complete college, and still less that she will enter graduate school. The representation of women consequently declines as they move upward through the stages of education beyond high school. In 1971, 50 percent of all high school graduates were women and 45 percent of first-year college students were women. During 1971 women earned 44 percent of the bachelor's degrees granted, 40 percent of the master's degrees, and 14 percent of the doctorates.

Even more striking are the differences in the courses taken. At both the undergraduate and advanced levels, women are heavily represented in English, languages, and fine arts—the more general cultural fields. They are poorly represented in disciplines having a strong vocational emphasis and promising a high pecuniary return. In 1970, 9.3 percent of the baccalaureates in business and 3.9 percent of the master's in business went to women.

In the biological sciences, women had a larger share, taking about 30 percent of the bachelor's and master's degrees and 16 percent of the doctorates. But only 8.5 percent of the M.D.'s and 5.6 percent of the law degrees went to women. Most of these percentages, low as they are, represent large gains from the preceding year.

The situation is quite different in the so-called women's occupations. In 1971 women received 74 percent of the B.A.'s and 56 percent of the M.A.'s given in education. In library science, which is even more firmly dominated by women, they received 82 percent of all degrees in 1971. And in nursing, 98 percent of all the degrees went to women.

It is not surprising, then, to find that women do not have anything like the same occupational distribution as men. Even within an educational level, significant differences remain in the distribution across broad occupational categories (Table 27). Although 77 percent of women college graduates in 1970 were in the professions, mostly as teachers, only 4.8 percent, compared to 20 percent for men, were classified as managers. At high school levels, the proportion of women working as skilled craftsmen is minuscule, although a substantial proportion of women are blue-collar workers in the lower paying operative categories.

The supplement to this chapter, appearing in Appendix A, summarizes in detail women's representation in occupations more narrowly defined. Although women are found in all occupations, the extent of occupational segregation by sex is large. In broad outline, this situation does not appear to have undergone any dramatic change between 1950 and 1970, although there are several examples of large increases in the proportion of women in less typically "female" occupations (for example busdrivers, bartenders, and compositors and typesetters).

TABLE 27.—Occupational distribution of employed persons by education and sex, 1970

Occupational groups	[Percent]				College graduates	
	High school				Men	Women
	1-3 years		4 years			
	Men	Women	Men	Women		
Total employed.....	100.0	100.0	100.0	100.0	100.0	100.0
Professional, technical, and kindred workers.....	2.8	3.6	7.6	7.1	58.9	77.4
Managers and proprietors.....	6.9	2.9	11.4	3.8	20.1	4.8
Salesworkers.....	5.6	10.2	7.5	8.1	8.6	2.3
Clerical and kindred workers.....	6.8	25.3	10.0	50.4	4.9	12.1
Craftsmen.....	25.6	2.4	26.4	1.8	3.3	.4
Operatives.....	27.3	22.5	20.6	11.4	1.4	.6
Nonfarm laborers.....	9.9	1.6	5.3	.8	.5	.1
Farm laborers and foremen.....	1.9	.6	.9	.3	.2	.1
Farmers and farm managers.....	2.2	.2	2.9	.2	.8	.1
Service workers excluding private household.....	10.8	25.4	7.5	14.5	1.4	1.9
Private household service workers.....	.2	5.2	( <sup>1</sup> )	1.7	( <sup>1</sup> )	.3

<sup>1</sup> Less than one tenth of 1 percent.

Note.—Detail may not add to totals because of rounding.

Source: Department of Commerce, Bureau of the Census.

Casual observation of individual occupations cannot, of course, provide a comprehensive indication of whether the occupational distributions of men and women, involving numerous occupations, have moved closer together or further apart. To help answer this question, an index was constructed and calculated for 1960 and 1970 which reflects the difference (for 197 occupations) between the occupational distributions of men and women. The index displays a small move toward occupational similarity between 1960 and 1970. (See the supplement to this chapter, included in Appendix A, for a more detailed description of the index.)

Another question of interest is whether the changes in the occupational distributions of men and women were in the direction of higher economic status and, if so, how far they went. Some insight into this question is obtained by calculating an index which reflects what earnings would have been in 1950, 1960, and 1970, if earnings were the same in all 3 years and only the occupational distributions changed. Median earnings for year-round, full-time workers in each of 11 broad occupational categories were used as the constant weights to calculate such an index. The results indicated that the occupational distributions of both men and women shifted in the direction of higher-earnings occupations from 1950 to 1960 and from 1960 to 1970. However, in the earlier period men moved ahead in this respect faster than women while in the second period the changes were similar for both.

### EARNINGS

In 1971 annual median earnings for women 14 years old and over were \$2,986, or 40 percent of the median earnings of men. But women work fewer hours per week and fewer weeks per year. If the comparison is restricted to year-round, full-time workers, women's earnings are 60 percent of men's, that is, \$5,593 compared to \$9,399. An additional adjustment for differences in the average full-time workweek—full-time hours for men were about 10 percent higher than for women—brings the female-male ratio to 66 percent in 1971.

Differentials of this order of magnitude appear to have persisted since 1956 (Table 28). Indeed, a slight increase in the differential seems to have occurred from 1956 to 1969. Part of the source of the increasing differential was the relatively low rate of growth in the earnings of female clerical workers and female operatives, who in 1970 accounted for 32 percent and 14 percent, respectively, of all women workers. On the other hand, the rate of growth of earnings of women in the professions was high (a 5.1-percent annual compound rate between 1955 and 1968) relative to all workers; more recently it was even high relative to male professionals.

TABLE 28.—Ratio of total money earnings of civilian women workers to earnings of civilian men workers, selected years, 1956-71

Occupational group	Actual ratios					Adjusted ratios <sup>1</sup>	
	1956	1960	1965	1969	1971	1969	1971
Total <sup>2</sup> .....	63.3	60.7	59.9	58.9	59.5	65.9	66.1
Professional and technical workers.....	62.4	61.3	65.2	62.2	66.4	67.9	72.4
Teachers, primary and secondary schools.....	( <sup>3</sup> )	75.6	79.9	72.4	82.0	( <sup>3</sup> )	( <sup>3</sup> )
Managers, officials, and proprietors.....	59.1	52.9	53.2	53.1	53.0	57.2	56.8
Clerical workers.....	71.7	67.6	67.2	65.0	62.4	70.0	66.9
Sales workers.....	41.8	40.9	40.5	40.2	42.1	45.7	47.4
Craftsmen and foreman.....	( <sup>4</sup> )	( <sup>4</sup> )	56.7	56.7	56.4	60.8	60.2
Operatives.....	62.1	59.4	56.6	58.7	60.5	65.4	66.6
Service workers excluding private household workers.....	55.4	57.2	55.4	57.4	58.5	62.5	63.2

<sup>1</sup> Adjusted for differences in average full-time hours worked since full-time hours for women are typically less than full-time hours for men.

<sup>2</sup> Total includes occupational groups not shown separately.

<sup>3</sup> Not available.

<sup>4</sup> Base too small to be statistically significant.

Note.—Data relate to civilian workers who are employed full-time, year-round. Data for 1956 include salaried workers only, while data for later years include both salaried and self-employed workers.

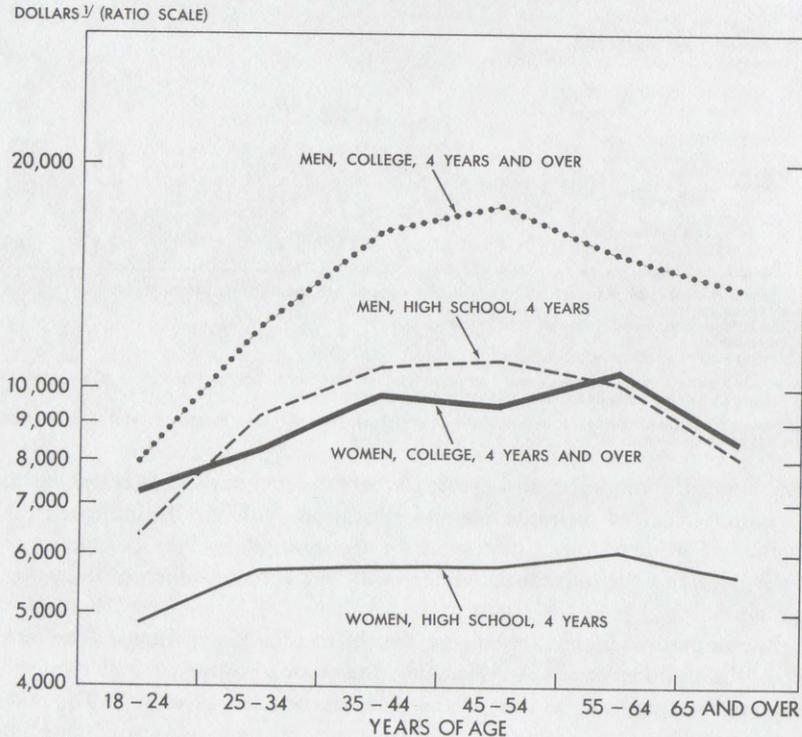
Sources: Department of Commerce, Bureau of the Census, Department of Labor, Bureau of Labor Statistics, and Council of Economic Advisers.

A large differential is also evident when the comparison is restricted to men and women of the same age and education. As Chart 10 indicates, the incomes of women do not increase with age in anything like the same way men's do. Thus the differential widens with age through much of the working life.

One important factor influencing the differential is experience. The lack of continuity in women's attachment to the labor force means that they will not have accumulated as much experience as men at a given age. The relatively steeper rise of men's income with age has been attributed to their greater accumulation of experience, of "human capital" acquired on the job. Since very few women have participated in the labor force to the same degree as men, it is difficult to set up direct comparisons between the earnings of men and women with the same lifetime pattern of work. Using data from the Labor Department's longitudinal study of women, referred to above, one study was able to compare the earnings of women working different amounts of time throughout their lives with the earnings of men, most of whom are presumed to work continuously after leaving school. The figures for men were taken from census data. The women's lifetime work experience was measured as the percentage of years each had worked since leaving school. However, a work year was crudely defined as one in which the women had worked at least 6 months. Thus no adjustment could be made for whether the years worked had been truly full-time commitments with respect to both hours worked per week and weeks worked per year.

Chart 10

## Annual Income by Age, for Male and Female High School and College Graduates



Among the women 30-44 years old in the survey, the gain from continuous work was apparently very large. If we look only at those women who had worked year-round, full-time in 1966, the median wage and salary income for the group who had worked each year since leaving school was \$5,618; for those who had worked less than 50 percent of the years since leaving school (almost half the group) the median income was \$3,655. The median wage and salary income of men in the same age group who had worked full-time, year-round in 1966 was \$7,529. The men are presumed to have worked continuously since leaving school. Thus the women who had worked less than half of the years since leaving school earned only 49 percent as much as men, while the small group of women who had worked each year earned 75 percent as much as men. Interestingly, single women who had worked each year since leaving school earned slightly more than single men. More sophisticated comparisons, adjusting for additional differences in

training, continuity at work, and education, can be made. One recent study found that the earnings differential was reduced to below 20 percent after taking account of such differences.

The importance of lifetime accumulated experience in influencing women's earnings suggests one possible explanation for the small decline in the ratio of women's to men's earnings between 1956 and 1969. Since the labor force participation of women has been rising rapidly, an increasing proportion of new entrants and of those with few accumulated years in the labor force could have resulted in a decline in the average experience level of all women. This drop would in turn temporarily push down the average level of earnings for all women. Unfortunately the data are not available to compare the ratio over a period of time between the earnings of women having a given number of years' experience and the earnings of men.

### DIRECT DISCRIMINATION VERSUS ROLE DIFFERENTIATION

A differential, perhaps on the order of 20 percent, between the earnings of men and women remains after adjusting for factors such as education, work experience during the year, and even lifelong work experience. How much of this differential is due to differences in experience or in performance on the job which could not be measured adequately, and how much to discrimination? The question is difficult to answer, in part because there are differences of opinion about what should be classified as discrimination.

Some studies have succeeded in narrowing the male-female differential well below 20 percent. Indeed, Department of Labor surveys have found that the differential almost disappears when men's and women's earnings are compared within detailed job classifications and within the same establishment. In the very narrow sense of equal pay for the same job in the same plant there may be little difference between women and men. However, in this way the focus of the problem is shifted but not eliminated, for then we must explain why women have such a different job structure from men and why they are employed in different types of establishments.

There is clearly prejudice against women engaging in particular activities. Some patients reject women doctors, some clients reject women lawyers, some customers reject automobile saleswomen, and some workers reject women bosses. Employers also may have formulated discriminatory attitudes about women, exaggerating the risk of job instability or client acceptance and therefore excluding women from on-the-job training which would advance their careers.

In fact, even if employers do estimate correctly the average job turnover of women, women who are strongly committed to their jobs may suffer from "statistical discrimination" by being treated as though their own behavior resembled the average. The extent to which this type of discrimination occurs depends on how costly it is for employers to distinguish women who

will have a strong job commitment from those who will not. Finally, because some occupations restrict the number of newcomers they take in and because women move in and out of the labor force more often, more women than men tend to fall into the newcomer category and to be thus excluded. For example, restrictive entry policies may have kept women out of the skilled crafts.

On the other hand, as discussed above, some component of the earnings differential and of the occupational differential stems from differences in role orientation which start with differences in education and continue through marriage, where women generally are expected to assume primary responsibility for the home and subordinate their own outside work to their household responsibilities.

It is not now possible to distinguish in a quantitative way between the discrimination which bars women from jobs solely because of their sex, and the role differentiation whereby women, either through choice or necessity, restrict their careers because of the demands of their homes. Some may label the latter as a pervasive societal discrimination which starts in the cradle; nonetheless, it is useful to draw the distinction.

One other missing link in our chain of understanding of these problems is the value of the work done at home by women. One study has found that women college graduates tend to reduce their outside work when their children are small more than less educated women, and that they also devote more time to the training of their children. Of course this pattern is undoubtedly facilitated by the higher income of their husbands. However, this pattern also results in a considerable sacrifice of earnings, and one may infer that these women have therefore placed a very high value on the personal attention they can give their children. Without more information, it is difficult to evaluate the full extent to which women's capabilities have actually been underutilized by society.

## SPECIAL PROBLEMS

### THE FEMALE-HEADED HOUSEHOLD

In 1971, some 6 million families, about 11.5 percent of all families, were headed by women. These women are widowed, divorced, separated, or single, and many have responsibilities for the support of children in fatherless families or of other relatives. Close to two-thirds of all female-headed families include children; the average number of children under 18 years of age in a female-headed family with children was about 2.3 in 1971, about the same as in male-headed families with children.

As a result of the division of labor within families, the average woman who has been married has not had the same labor market experience or vocationally oriented training as her husband. Unless she has a substantial alimony or pension, she is likely to face financial difficulties. The median income of female-headed families was \$5,116 in 1971, less than half the in-

come of male-headed families (\$10,930). When women who head families were full-time, year-round workers, the family's median income was \$7,916; but only 32 percent of women heading families were able to be full-time, year-round workers. And the woman who heads a family and works has additional expenses of child care and other home care expenses.

The problems faced by the woman who heads a household are particularly acute if the woman is black, and 27 percent of women heading households are black. For this group, median family income was only \$3,645 in 1971. Although, at higher education levels, black women now earn amounts comparable to white women, those black women who head families are at a disadvantage compared to white women. The median personal income of white women heading households and working year-round, full-time was \$6,527 in 1971, compared to \$5,227 for black women in the same position.

As a result of the combination of a large number of dependents and the difficulty of maintaining the dual responsibility of monetary support and home care, many female-headed families fall below the low-income level. In 1971, 34 percent of female-headed families were below the low-income level, compared to 7 percent for male-headed families. Among black households with a female head, 54 percent were below the low-income level. A large proportion receive public assistance. In 1971, 30 percent of the women heading households received public assistance payments.

It has been suggested, though not proved, that widespread availability of public assistance has encouraged husbands to desert their wives or wives to leave their husbands in families where the husband earns little more than the amount of welfare benefits his family would be entitled to in his absence. Remarriage may also be discouraged because the low-income mother would then lose her entire public stipend, including the child support portion, and without some outside child support a man might be reluctant to marry a woman with several children.

Among the women who are now welfare recipients many are handicapped by lack of education and training and are not in a position to earn an income that would lift them and their families above poverty levels. A program established in 1967, the Work Incentive Program, now gives many mothers currently on welfare, training and placement assistance so that they can improve their ability to support themselves and their dependents.

#### THE INCOME TAX

Devising a tax system which is equitable and efficient has always posed formidable problems, and often the best solution is one involving compromise with one or more of the objectives. The tax treatment of working wives is one of the more difficult problems. The income tax law as such treats men and women equally and, indeed, its effects on single men and single women are the same. However, some of the features of the tax structure, which have been considered desirable for other purposes, have, as a

by-product, unequal effects on the second earner of a married couple, who is usually the wife.

Only income arising from market transactions is taxed. Indeed, there is no practical way to assign a market value to the unpaid work performed at home and then subject it to the tax. As a result, the tax system imposes a general bias in the economy favoring unpaid work at home compared to paid work in the market. However, the bias and the resulting disincentive toward market work are particularly relevant for the married woman who traditionally has done more work at home.

An equity problem also arises from this situation. To use a hypothetical example, a husband and wife each earning \$8,000 would pay the same income tax as a couple where the husband alone works and earns \$16,000, although the couple with two earners will have the additional expenses of buying the services which would be produced at home and untaxed if the wife did not work.

There is the further problem that a married couple may pay more or less income tax than two single persons whose combined income equals the couple's, depending upon how the income is divided between the two individuals. This problem reflects a basic ambivalence about whether the appropriate unit of taxation is the individual or the family.

Remedies for the situation are not easy to find. One suggestion has been to allow working wives to deduct a given percentage of their earnings from their income for tax purposes. However, this would be unfair to single persons, who also incur expenses of going to work. A general earned income credit has also been suggested, but this creates a bias against investments in capital and in favor of wage income.

As discussed below, the Revenue Act of 1971 has given expanded tax relief to working wives with children by allowing more liberalized child care deductions to couples within a given income range. This provision, however, does not affect couples without children or couples with combined incomes outside the allowable income range.

#### CHILD CARE

Provision for child care is a cost to working mothers and a major obstacle to the employment of many other mothers who would work outside the home if they could find satisfactory arrangements for taking care of their children. As more mothers have taken jobs outside the home, and more weigh the possibility of doing so, several major questions about child care have become intense national issues.

One question is whether the Government should pay for part or all of the cost of child care. This question is usually raised about the Federal Government, but it could be equally asked about State or local governments. According to one view of the matter parents have chosen to have children, which implies a certain allocation of their resources, therefore they have no reason to burden other taxpayers to look after the children. Another view of

the matter is that Government subsidies can be justified and different groups have cited different reasons. The point has been made that the pressures of custom result in a bias against the wife going to work while the husband stays home with the children. A child-care subsidy for working mothers would help remove any harmful effects of this cultural bias. Another reason given is that there is a national interest in the proper care of children, who are, of course, the future nation, and that this case justifies Government subsidies. The analogy commonly given is to public education.

Government has given subsidies to families with children but there has been no consistent philosophy behind them. At the extreme, with respect to children in very poor families, we have long recognized the need for public assistance in the form of the program of Aid to Families with Dependent Children. This program is not specifically addressed to children with working mothers. In fact, until recently it was tilted *against* helping working mothers. The Federal Government also provides a form of assistance for child care through the income tax. With the Revenue Act of 1971, a much more liberal deduction than had ever been provided was instituted specifically for child-care expenses incurred by working wives. Below a combined husband-wife income of \$18,000, a working wife can now deduct up to \$400 a month for child care expenses. The deduction is scaled downwards to zero as combined income goes from \$18,000 to \$27,600. The two groups not covered are women whose family income is too low to benefit from a tax deduction and women at the other end of the income scale.

Public discussion of Government support for child care has not clearly distinguished among several possible objectives:

- (a) To reward and assist the care of all small children;
- (b) To assist the care of small children whose parents might not be otherwise able to care for them;
- (c) To assist the care of the small children of working mothers;
- (d) To assist in the care of small children in a particular way—through day-care institutions, or at home, etc.

Both the amount of Government support that is desirable, and the form it should take if it is to be provided, depend on the choice made among these objectives.

Recently, publicly supported institutional group care, or day care, has received considerable attention as one approach to helping the working mother. Some have also stressed day care as a developmental program. It may be noted that a very small proportion of working women have depended on group day care in an institutional center. A Government-sponsored survey of 1965 found that, among employed mothers of children under 6, only 6.4 percent depended on school or group care centers. About 47 percent of the women arranged to have their children cared for at home, often by a relative. The rest mainly arranged for care in someone else's home (31 percent) or looked after the child while working (15 percent).

Some have attributed the low use of day care to a failure of the market to provide a service that would be utilized if financing were available. Others have interpreted it as an indication that the true demand for institutional day care is low. Even among more affluent and knowledgeable working mothers who presumably could afford it, dependence on institutional group care is low. A survey of college graduates found that in 1964, among those who worked and who had children under 6 years, 9 percent used group care, which included nursery schools, kindergartens, and day-care centers. Most (73 percent) arranged for care in their own home.

Whether institutional day care provides the best use of dollars spent on child care has yet to be established. While this issue has not been resolved, it is clear that the problems of mothers who want and need to work require serious attention and a continuing search for new solutions.

### GOVERNMENT ACTION

Government has been profoundly concerned with promoting full equality of opportunity for women within both the public and the private sectors. Two approaches have been followed. The first involves the use of law and regulations where they are both applicable and compatible with other goals of a democratic society.

A number of laws have been passed and Executive Orders issued which deal with discrimination by employers. Included are the Equal Pay Act of 1963, requiring employers to compensate men and women in the same establishment equally for work of equivalent skill and responsibility, and Title VII of the Civil Rights Act of 1964, which prohibits discrimination in hiring, discharging, compensation, and other aspects of employment. Title VII is administered by the Equal Employment Opportunity Commission (EEOC). The Equal Employment Opportunity Act, signed by the President in 1972, gave the EEOC enforcement power through the courts in sex-discrimination cases. In December 1971, Order No. 4, under Executive Order 11246, was extended to women. This Order requires Federal contractors employing more than 50 workers and holding contracts of \$50,000 or more to formulate written affirmative action plans, with goals and timetables, to ensure equal opportunities. Title IX of the Education Amendments of 1972 prohibits discrimination in educational programs or activities on the basis of sex.

The Equal Rights Amendment to the Constitution, which was strongly supported by the President, passed the Senate on March 22, 1972, and has now been ratified by 22 States. The proposed amendment would provide that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex," and would authorize the Congress and the States to enforce the amendment by appropriate legislation. The purpose of the proposed amendment would be to provide constitutional protection against laws and official practices that treat men and women differently.

The other approach of Government to providing equality to women has been through leadership. The Women's Bureau in the Department of Labor has for 50 years been concerned with the problems of women at work. Recently, several new groups, each concerned with different areas affecting women, have been formed. The formation of the Advisory Committee on the Economic Role of Women is one such effort. The Citizen's Advisory Council on the Status of Women is another. The latter is a council of private citizens appointed by the President, which surveys the social and political issues of particular interest to women and makes recommendations for legislation or other suitable social action. In an effort to recruit women to top-level jobs in the Government, the President in 1971 appointed to the White House staff a special assistant for this purpose. As a result many women have been placed in key policy making positions, positions never before held by women.

It is only in the past few years that the problems women face as a group have been given the widespread recognition they deserve. There is much to be learned before we can even ask all the appropriate questions. Many of the problems involve profound issues of family and social organization. By listening to diverse groups and to the discussion of the public it is hoped that Government will be able to find its appropriate role. We believe that the newly formed Advisory Committee on the Economic Role of Women will contribute to that process.

## SUPPLEMENT TO CHAPTER 4

In order to answer the question whether the occupational distribution of women has moved closer to that of men's, an index of occupational dissimilarity was constructed for 1960 and 1970. The particular measure of dissimilarity used here is calculated by taking the absolute difference (for each of 197 occupations) between the percentage of the female experienced civilian labor force in a given occupation and the percentage of the male experienced civilian labor force in the same occupation, summing these differences across the 197 occupations, and then dividing this sum by 2. Those persons in the experienced labor force who did not report their occupation were excluded from the denominator. If men and women were to have the identical occupational distributions then the value of the index would be 0. At the other extreme, if men and women were completely occupationally segregated, so that they were never in the same occupation, the index would have a value of 1.

The values of the occupational dissimilarity index, calculated as described, were as follows:

1960 -----	.629
1970 -----	.598

The index therefore indicates a very small change in the direction of increased occupational similarity between 1960 and 1970. The data for the calculations were taken from the decennial censuses of 1960 and 1970.

In Table 33, women's representation in a group of detailed occupations is given for 1950, 1960, and 1970.

TABLE 33.—*Women in experienced civilian labor force, 1950, 1960, and 1970*  
(14 years of age and over)

Occupational group	Number of women (thousands)			Women as percent of all persons in occupation		
	1950	1960	1970	1950	1960	1970
TOTAL.....	16,481.9	22,303.7	30,601.0	28.1	32.8	38.0
Professional and technical workers.....	1,896.9	2,723.9	4,397.6	39.0	38.4	39.9
Accountants.....	57.0	81.9	187.0	14.9	16.5	26.2
Architects.....	.9	.8	2.0	3.8	2.1	3.6
Engineers.....	6.7	7.2	20.3	1.3	.8	1.6
Farm and home management advisers.....	5.0	6.4	6.5	46.1	47.2	49.7
Lawyers and judges.....	7.0	7.5	13.4	4.1	3.5	4.9
Librarians.....	50.7	64.6	101.5	88.8	85.4	82.0
Life and physical scientists.....	12.6	15.2	29.2	11.0	9.2	13.7
Personnel and labor relations workers.....	15.0	34.2	91.7	28.3	33.1	30.9
Pharmacists.....	7.4	7.2	13.3	8.7	7.5	12.0
Physicians, medical and osteopathic.....	12.3	16.2	26.1	6.7	6.9	9.3
Dietitians.....	21.7	24.8	37.8	96.5	92.7	92.0
Registered nurses.....	399.2	613.7	819.3	97.6	97.5	97.3
Therapists.....	(1)	16.4	48.5	(1)	63.4	63.5
Health technicians.....	46.3	88.0	184.1	57.4	68.2	69.7
Clergymen.....	7.3	4.7	6.3	4.4	2.3	2.9
Other religious workers.....	28.7	38.6	20.1	69.9	63.3	55.7

TABLE 33.—Women in experienced civilian labor force, 1950, 1960, and 1970—Continued  
(14 years of age and over)

Occupational group	Number of women (thousands)			Women as percent of all persons in occupation		
	1950	1960	1970	1950	1960	1970
<b>Professional and technical workers—Cont'd.</b>						
Social scientists.....	11.3	15.1	32.0	32.9	25.4	23.2
Social workers.....	54.0	59.4	138.9	69.3	62.8	62.8
Recreation workers.....	7.7	14.9	22.5	45.4	51.2	42.0
Teachers, elementary.....	(1)	851.2	1,199.4	(1)	85.8	83.7
Teachers, secondary.....	(1)	280.5	498.7	(1)	49.3	49.3
Teachers, college and university.....	27.8	46.5	140.4	22.4	23.9	28.6
Engineering and science technicians.....	(1)	43.5	68.7	(1)	11.1	12.9
Draftsmen.....	7.2	12.3	23.6	6.0	5.6	8.0
Radio operators.....	1.7	3.1	7.6	10.2	16.7	25.9
Authors.....	5.8	7.3	7.7	36.5	25.5	29.1
Dancers.....	(1)	3.9	5.7	(1)	86.0	81.3
Designers.....	10.7	13.4	27.2	26.7	19.3	24.2
Editors and reporters.....	29.4	39.0	61.5	32.1	36.6	40.6
Musicians and composers.....	(1)	29.8	33.5	(1)	38.6	34.8
Photographers.....	8.6	6.5	9.5	16.2	12.2	14.2
Other professional, technical, and kindred workers.....	(1)	270.1	513.9	(1)	33.9	32.9
<b>Managers and administrators, except farm.....</b>						
Buyers, wholesale and retail trade.....	35.5	34.2	52.8	24.6	35.6	29.8
Credit men.....	6.6	12.0	17.0	19.2	25.1	28.3
Public administrators and postal inspectors.....	2.5	3.1	6.2	4.4	3.9	6.1
Managers and superintendents, building.....	22.9	20.0	34.0	34.2	43.6	40.2
Administrators, n.e.c., Federal.....	5.2	12.1	20.4	10.6	15.3	16.9
Administrators, n.e.c., State.....	2.1	4.8	6.5	9.5	12.8	13.4
Administrators, n.e.c., local.....	18.8	17.2	20.6	22.9	21.8	26.2
Officials of societies and unions.....	3.2	5.1	8.2	10.9	11.8	16.2
Postmasters and mail superintendents.....	17.3	15.0	11.3	44.9	39.3	31.8
Purchasing agents and buyers, n.e.c.....	6.2	10.3	22.5	9.5	9.2	13.7
Restaurant, cafeteria and bar managers.....	93.9	95.5	112.6	26.9	32.5	34.2
Other specified managers and administrators, except farm.....	(1)	72.4	223.4	(1)	14.9	18.4
<b>Managers and administrators, n.e.c., salaried:</b>						
Construction.....	2.0	5.0	8.0	2.2	3.4	3.1
Manufacturing.....	27.8	45.0	43.0	6.8	7.1	6.3
Transportation.....	4.2	10.8	17.6	4.4	8.7	12.3
Communication and utilities.....	5.7	11.3	13.3	9.7	11.0	11.8
Wholesale trade.....	8.3	14.3	18.9	5.4	7.0	7.4
Retail, hardware, etc.....	1.4	2.3	2.7	3.3	4.3	5.1
Retail, general merchandise.....	13.6	23.6	25.4	23.2	26.2	24.6
Retail, foodstores.....	12.7	9.5	17.3	12.8	8.9	12.3
Retail, motor vehicles and accessories.....	2.4	3.9	5.7	4.3	4.4	5.4
Retail, apparel and accessories.....	14.1	17.0	19.9	33.5	33.5	34.2
Retail, furniture, etc.....	3.1	3.4	5.3	11.2	10.7	12.1
Other retail trade.....	13.7	14.7	24.2	12.4	11.9	13.1
Finance, insurance and real estate.....	25.4	47.9	32.8	13.9	14.7	17.5
Business and repair services.....	6.1	16.1	19.8	10.8	16.8	14.0
Personal services.....	21.2	28.7	36.0	33.7	35.8	26.8
All other industries.....	39.6	64.5	64.0	25.3	27.8	26.8
<b>Managers and administrators, n.e.c., self-employed:</b>						
Construction.....	2.6	2.9	2.8	1.3	1.3	1.9
Manufacturing.....	15.2	11.8	6.0	6.5	6.9	9.1
Transportation.....	2.4	4.6	2.1	4.6	10.6	9.8
Wholesale trade.....	7.1	6.9	4.5	4.0	5.0	8.1
Retail, hardware, etc.....	3.8	3.4	2.4	4.7	5.1	8.4
Retail, general merchandise.....	15.1	10.8	8.0	23.6	23.3	32.4
Retail, food.....	70.6	42.7	30.1	18.4	19.4	26.1
Retail, gas service stations.....	5.2	4.1	3.5	3.6	2.7	3.4
Retail, apparel and accessories stores.....	24.4	19.2	10.0	29.5	33.7	41.9
Retail, furniture, etc.....	4.9	4.5	3.7	7.3	9.2	13.6
Other retail trade.....	38.8	32.8	27.4	14.3	15.9	25.1
Finance, insurance and real estate.....	7.2	8.3	3.0	10.9	11.5	12.6
Business and repair services.....	7.4	8.1	6.2	6.0	8.4	11.9
Personal services.....	39.5	43.6	27.8	28.0	33.1	31.3
All other industries.....	14.7	21.3	7.4	14.2	20.3	22.1

TABLE 33.—*Women in experienced civilian labor force, 1950, 1960, and 1970—Continued*  
(14 years of age and over)

Occupational group	Number of women (thousands)			Women as percent of all persons in occupation		
	1950	1960	1970	1950	1960	1970
<b>Sales workers.....</b>	<b>1,374.7</b>	<b>1,736.0</b>	<b>2,096.7</b>	<b>34.2</b>	<b>36.2</b>	<b>38.6</b>
Advertising agents and salesmen.....	5.3	4.9	13.0	15.1	13.9	20.1
Demonstrators.....	11.0	26.7	36.7	77.5	93.2	91.1
Hucksters and peddlers.....	3.5	37.7	96.4	14.9	60.5	78.7
Insurance agents, brokers, and underwriters.....	27.3	36.1	57.6	8.9	9.7	12.5
Newsboys.....	4.1	8.6	13.9	3.8	4.3	7.4
Real estate agents and brokers.....	22.1	46.8	85.2	15.6	23.9	32.0
Sales representatives, manufacturing.....	23.0	50.8	36.8	7.2	10.7	8.8
Sales representatives, wholesale.....	15.3	21.3	42.8	3.8	4.2	6.6
Salesmen and clerks, retail.....	1,228.9	1,451.4	1,619.4	48.9	54.4	56.5
Other salesworkers.....	34.3	51.8	94.8	23.0	20.2	27.0
<b>Clerical and kindred workers.....</b>	<b>4,343.4</b>	<b>6,407.0</b>	<b>9,910.0</b>	<b>61.9</b>	<b>67.9</b>	<b>73.6</b>
Bank tellers.....	27.7	94.6	218.6	44.6	70.2	86.2
Bookkeepers.....	566.3	793.6	1,291.7	77.4	83.4	82.0
Cashiers.....	193.7	393.1	734.8	81.4	77.1	83.7
Collectors, bill and account.....	3.9	6.7	19.2	16.0	20.0	36.2
Dispatchers and starters, vehicle.....	4.1	5.2	10.5	12.7	10.8	17.1
Library attendants and assistants.....	9.1	28.1	101.2	76.7	75.7	78.6
Mail carriers, post office.....	3.4	4.4	20.5	2.0	2.2	8.0
Messengers and office boys.....	10.9	9.3	12.1	18.6	14.7	19.7
Office machine operators.....	119.5	239.1	423.1	81.6	74.4	74.0
Shipping and receiving clerks.....	20.3	26.4	62.9	6.8	8.1	14.7
Stenographers, typists, and secretaries.....	1,524.9	2,233.5	3,786.9	94.6	96.5	96.6
Telegraph operators.....	7.6	4.7	3.7	21.6	22.8	29.4
Telephone operators.....	349.2	356.2	398.3	95.8	95.8	94.5
Ticket, station, and express agents.....	7.9	16.2	36.7	12.7	21.8	36.7
Other clerical workers.....	1,494.9	2,196.0	2,789.8	47.2	54.6	58.9
<b>Craftsmen.....</b>	<b>247.3</b>	<b>295.3</b>	<b>524.1</b>	<b>3.1</b>	<b>3.1</b>	<b>5.0</b>
Bakers.....	13.9	21.4	33.9	11.6	18.2	30.0
Bookbinders.....	19.5	17.6	20.9	58.1	58.9	58.1
Compositors and typesetters.....	12.2	16.2	24.9	6.9	8.4	15.3
Decorators and window dressers.....	14.0	24.4	41.9	31.9	46.3	57.7
Electricians.....	2.1	2.8	9.3	.6	.8	1.9
Linemen and servicemen, telegraph, telephone, and power.....	5.1	5.6	10.7	2.4	2.1	2.7
Engravers, except photoengravers.....	1.4	2.1	2.5	14.5	17.9	27.5
Foremen, nonmanufacturing.....	18.2	22.8	51.1	5.3	4.4	7.5
Foremen, manufacturing.....	51.2	58.2	80.9	10.0	8.8	8.7
Inspectors.....	7.3	6.6	9.7	7.7	6.5	8.0
Machinists.....	7.6	7.4	12.8	1.5	1.4	3.3
Mechanics and repairmen, except air, auto.....	16.6	15.4	35.0	1.6	1.1	2.5
Aircraft mechanics.....	1.0	1.9	4.5	1.3	1.6	3.1
Auto mechanics.....	4.3	2.4	12.9	.6	1.4	1.4
Opticians, lensgrinders and polishers.....	2.4	3.2	6.5	12.1	15.3	23.1
Painters, construction and maintenance.....	9.1	7.1	14.8	2.1	1.8	4.1
Pressmen and plate printers, printing.....	2.5	5.1	14.1	4.8	6.1	8.8
Stationary engineers.....	1.8	1.6	2.6	.8	.6	1.5
Tailors.....	16.3	23.1	22.5	19.3	26.5	31.7
Upholsterers.....	5.5	6.2	10.7	8.7	9.9	16.5
Other craftsmen.....	35.3	44.2	101.8	1.1	1.3	2.8
<b>Operatives.....</b>	<b>3,190.8</b>	<b>3,521.2</b>	<b>4,222.6</b>	<b>27.4</b>	<b>28.7</b>	<b>31.5</b>
Dressmakers and seamstresses, except factory.....	140.3	121.7	96.9	97.3	96.7	95.0
Filers, polishers, sanders and buffers.....	7.3	21.0	26.9	4.8	13.8	21.8
Laundry and drycleaning operatives.....	302.7	282.9	261.0	67.6	65.3	69.8
Meatcutters and butchers, except manufacturing.....	3.8	5.8	11.2	2.2	3.1	5.4
Milliners.....	12.5	3.9	2.1	89.4	90.7	89.4
Painters, manufactured articles.....	14.8	16.5	18.6	12.1	13.5	15.3
Photographic process workers.....	13.5	21.5	31.4	43.7	45.8	46.9
Sawyers.....	2.6	2.4	9.6	2.6	2.3	8.9
Textile operatives.....	(1)	278.5	247.6	(1)	53.2	54.8
Bus drivers.....	4.5	18.6	67.1	2.9	10.1	28.0
Deliverymen and routemen.....	4.3	15.0	21.3	1.7	3.3	3.3
Taxicab drivers and chauffeurs.....	3.4	4.6	9.0	1.6	2.7	5.7
Truck drivers.....	8.6	8.3	21.6	.6	.5	1.5
Other specified operatives.....	(1)	2,060.6	2,602.1	(1)	36.7	39.1

TABLE 33.—Women in experienced civilian labor force, 1950, 1960, and 1970—Continued  
(14 years of age and over)

Occupational group	Number of women (thousands)			Women as percent of all persons in occupation		
	1950	1960	1970	1950	1960	1970
<b>Operatives—Cont'd.</b>						
Miscellaneous and not specified operatives, n.e.c.	(1)	660.0	796.2	(1)	25.7	29.6
Lumber and wood products	(1)	10.6	11.7	(1)	11.4	15.1
Furniture and fixtures	(1)	8.3	14.9	(1)	15.6	28.1
Stone, clay, and glass products	(1)	16.5	19.7	(1)	15.1	18.7
Primary metal industries	(1)	6.9	12.7	(1)	3.8	7.1
Fabricated metal industries	(1)	27.9	33.1	(1)	19.7	22.9
Machinery, except electrical	(1)	16.3	25.7	(1)	11.8	16.0
Electrical machinery, equipment, and supplies	(1)	79.3	113.8	(1)	50.3	55.2
Transportation equipment	(1)	15.4	27.1	(1)	10.7	16.1
Professional and photographic equipment, and watches	(1)	15.8	19.5	(1)	42.6	48.8
Miscellaneous manufacturing industries	(1)	57.2	66.5	(1)	34.2	39.0
Food and kindred products	(1)	91.8	76.6	(1)	31.5	34.8
Tobacco manufactures	(1)	17.7	10.3	(1)	54.9	51.6
Apparel and other fabricated textile products	(1)	87.4	74.5	(1)	74.0	75.5
Paper and allied products	(1)	46.4	43.0	(1)	25.5	23.7
Printing, publishing, etc.	(1)	32.4	36.7	(1)	42.4	45.5
Chemicals, etc.	(1)	18.5	25.5	(1)	12.4	17.0
Rubber and miscellaneous plastic	(1)	31.9	60.7	(1)	26.4	35.1
Leather products	(1)	18.2	26.3	(1)	43.9	57.6
Wholesale and retail	(1)	35.5	47.1	(1)	31.4	30.6
Business and repair services	(1)	5.4	8.1	(1)	10.9	14.7
Public administration	(1)	2.3	3.7	(1)	13.3	16.2
Other nonmanufacturing	(1)	18.2	38.9	(1)	12.0	21.0
<b>Laborers, except farm</b>	<b>134.1</b>	<b>193.1</b>	<b>294.6</b>	<b>3.6</b>	<b>5.1</b>	<b>8.4</b>
Miscellaneous and not specified laborers	(1)	61.2	75.0	(1)	5.3	10.9
Lumber and wood products, except furniture	(1)	.6	1.8	(1)	1.3	7.0
Stone, clay, and glass products	(1)	2.5	1.6	(1)	4.7	6.6
Metal industries	(1)	4.5	6.3	(1)	2.1	6.1
Electrical machinery, equipment, and supplies	(1)	4.2	4.3	(1)	18.3	32.7
Food and kindred products	(1)	10.1	6.5	(1)	11.2	14.9
Textile mill products	(1)	1.9	2.6	(1)	13.9	22.1
Apparel and other fabricated textile products	(1)	1.7	1.8	(1)	43.0	49.3
Leather and leather products	(1)	1.6	1.4	(1)	19.2	34.8
Other manufacturing	(1)	16.0	17.1	(1)	7.6	14.4
Transportation, communication, and public utilities	(1)	2.9	3.2	(1)	1.5	3.0
Wholesale and retail trade	(1)	3.9	11.5	(1)	3.0	11.8
Public administration	(1)	.4	1.5	(1)	1.1	7.3
Other nonmanufacturing industries	(1)	11.0	15.4	(1)	7.7	13.1
<b>Other nonfarm laborers</b>	<b>(1)</b>	<b>132.1</b>	<b>220.0</b>	<b>(1)</b>	<b>5.1</b>	<b>7.8</b>
<b>Farm workers</b>	<b>602.2</b>	<b>394.8</b>	<b>222.3</b>	<b>8.8</b>	<b>9.6</b>	<b>9.5</b>
Farmers, owners, and tenants	118.3	119.0	59.9	2.8	4.8	4.6
Farm managers	2.4	.7	2.7	6.5	2.9	4.4
Farm laborers, wage workers	148.9	147.6	117.7	9.5	11.5	13.9
Farm laborers, unpaid family workers	330.7	126.8	39.3	35.1	44.4	36.2
Other farm laborers	2.0	.7	2.7	7.2	2.2	7.1

TABLE 33.—*Women in experienced civilian labor force, 1950, 1960, and 1970—Continued*  
(14 years of age and over)

Occupational group	Number of women (thousands)			Women as percent of all persons in occupation		
	1950	1960	1970	1950	1960	1970
Service workers.....	3,564.1	4,890.3	5,751.9	58.1	61.9	60.0
Cleaners and charwomen.....	75.3	167.7	266.1	60.5	41.7	56.6
Janitors and sextons.....	56.5	91.3	165.2	12.0	11.6	12.7
Bartenders.....	13.1	20.5	41.9	6.4	11.1	21.1
Cooks, except private household.....	257.1	385.4	550.5	55.2	63.9	62.1
Counter and fountain workers.....	47.4	119.4	126.3	50.9	70.9	75.0
Waiters and waitresses.....	579.8	780.0	1,002.4	81.8	86.8	89.0
Practical nurses.....	138.4	166.5	233.2	96.4	95.4	96.4
Other health services.....	232.0	445.0	847.4	72.6	73.4	86.2
Attendants, recreation and amusement.....	5.2	13.0	19.7	7.9	17.6	23.8
Attendants, personal service, n.e.c.....	33.5	46.8	40.9	67.2	55.6	62.6
Boarding and lodging housekeepers.....	23.6	26.4	5.4	75.6	88.5	71.9
Elevator operators.....	27.0	24.9	10.2	29.1	32.5	27.6
Barbers, hairdressers, and cosmetologists.....	193.2	278.0	442.4	49.2	56.9	68.0
Housekeepers, except private household.....	85.8	51.0	76.6	77.2	73.6	71.8
Guards and watchmen.....	5.3	5.2	17.0	2.1	2.0	5.2
Policemen and detectives.....	3.9	7.0	13.5	2.0	2.7	3.6
Other protective service workers.....	2.1	14.2	28.7	1.5	7.1	11.0
Other service workers, except private household.....	345.2	496.8	761.5	45.4	68.8	66.0
Housekeepers, private household.....	147.4	149.0	101.5	97.6	95.5	96.2
Laundresses, private household.....	73.3	40.7	11.9	97.0	98.2	94.8
Other private household workers.....	1,219.1	1,561.9	989.7	94.5	96.5	96.6
Occupation not reported.....	447.6	1,297.7	2,147.1	35.2	37.6	41.5

<sup>1</sup> Data are not available because of changes in classification.  
n.e.c.—not elsewhere classified.

Note: Occupational classifications in this table are not exactly comparable with Census classifications because of re-grouping detailed occupations.

Detail for 1950 is not always strictly comparable with later years because of changes in classification.

The data are based on samples drawn from the decennial censuses. The sample sizes are: 1950, 3½ percent; 1960, 25 percent; 1970, 20 percent.

Detail may not add to totals because of rounding.

Sources: Department of Commerce, Bureau of the Census, and Council of Economic Advisers.

Mrs. WHITMAN. In fact, this fourth chapter of the 1973 Economic Report of the President represents the first time that the report of the Council of Economic Advisers has directed considerable attention to the economic problems of women. The formation of the Advisory Committee on the Economic Role of Women is another first for the Council. The economics profession has been slow in developing expertise on the special problems of women; and Federal data sources have only begun to tailor surveys so that they can yield appropriate statistics about women. One role of the Committee is to fill in some of the deficiencies in expertise on this subject for the Council. The association of the Committee with the Council provides a channel through which the interests of women are represented in economic policy decisions.

Indeed, we are glad to observe that finally women and economics are being included in the same breath without a knowing wink by the male economist. One sign of this is the change in a passage found in various editions of Professor Paul Samuelson's well-known economics textbook. Lamenting the popular reaction to the results of rationing, Professor Samuelson wrote in his first edition (1948) :

Of course, there are always a few women and soapbox orators, who are longer on intuition than brains and who blame their troubles on the mechanism of rationing itself rather than on the shortage.

In the seventh edition (1967), we find soapbox orators dropped and the sentence is changed to :

Of course, there are always a few women and cranks, longer on intuition than brains, who blame their troubles on the mechanism of rationing itself rather than on the shortage.

By the liberated eighth edition (1970) he writes :

Of course, there are always some cranky customers, longer on intuition than brains, who blame their troubles on the mechanism of rationing itself rather than on the shortage.

So by 1970 "women" had disappeared from that rather slighting reference.

We have asked to insert into the record chapter 4 of the 1973 economic report. I would like here simply to talk about a few highlights of the chapter and primarily to report on some additional information and analysis that we have been able to acquire and develop since the economic report.

One runs the risk here, of course, that in analyzing an issue of appearing to minimize it. Emphasis on dry numbers can be taken as a lack of feeling. This is particularly the case when the issue is discrimination. However, it is the business of the professional economist to analyze and to measure and our contribution is best made along these lines.

In the economic report, we noted that there is an enormous gap between the average earnings of women and men. At this point we cannot distinguish the precise amount of the differential that can be attributed to discrimination in the labor market from the amount attributable to differences in experience or other qualifications. However, recent research has provided much more insight into the likely orders of magnitude. There is evidence that at least 45 percent of the difference in hourly earnings between men and women can be traced

to differences in experience. On the other hand, there appears to be a residual of at least 30 percent of the differential that cannot be clearly attributed to differences in experience or other qualifications and that can therefore be regarded as the result of discriminatory treatment in the labor market.

In trying to analyze this, unfortunately, the most common kind of data available were annual earnings data, which are not the appropriate data for understanding this sex differential in earnings.

Mr. STEIN. Mrs. Griffiths, will you allow me to apologize for my lateness.

Representative GRIFFITHS. Yes, I will.

Mr. STEIN. I was at a meeting with the President and a number of Congressmen and Senators, from which I found it very difficult to disengage myself.

Representative GRIFFITHS. Thank you.

Mrs. WHITMAN. Women work, on the average, fewer hours during the week and fewer weeks during the year than men do. For example, during 1969, women averaged about 1,430 working hours, or 73 percent as many hours as men. On an annual basis, during 1969, women earned on the average, 47 percent as much as men in wages and salaries; on an hourly basis, it was 63 percent.

Women and men differ in exposure to the labor force in another very important way. Women, on the average, accumulate fewer years of lifetime experience and that experience is often highly segmented. In our economy, some skills are learned in schools and in formal training programs. But a vast amount of skill appears to be learned on the job. This is believed to be the reason why earnings increase so much with years in the labor force. Among men, this is evident in the sharp increase of earnings with age, since men typically stay in the labor force continuously after completing school. Among women, age is not very strongly related to years of experience and earnings do not rise very sharply with age.

Recently, the National Longitudinal Survey (NLS) sponsored by the Labor Department, has provided the first large scale body of data giving direct information on lifetime work history of women, their family situations, their training, and their earnings. In a recent analysis of the NLS data, Jacob Mincer and Solomon Polachek show that experience does indeed matter for women and that the continuity as well as the number of years of experience have important effects on women's earnings. Years spent out of the labor force are not neutral in their effect on earnings; they have a negative effect. Skills depreciate during that time and the more education a woman has, the greater the rate of depreciation during the time spent at home. Women who never marry have lifetime work histories closer to those of men's and this is the main reason why the hourly earnings of white single women as observed in the NLS sample were 86 percent of the earnings of white married men of the same age, while the hourly earnings percent for white married women was 66. Finally, the Mincer-Polachek analysis suggests that differences between the work histories of married women and married men can account for between 45 and 70 percent of the hourly earnings gap. That is a very large range, but that is as much as the most sophisticated statistical analysis could narrow it down to.

In other words, these recent results indicate that if married women had the same work-life pattern as married men they would earn considerably more than they now do, but still only 80 to 90 percent as much as men. Several other studies have been made of the sex differential in earnings, but concentrating on more limited, and more homogeneous, segments of the labor market, such as the academic labor market. Interestingly, after adjustment for experience, training, and other factors, women's earnings as a percent of men's were again found to be on the order of 80 to 90 percent. The residual differential of 10 to 20 percent would seem then to be a current, though highly tentative estimate of the reduction in their earnings that women suffer simply because they are women.

In the "1973 Economic Report," we indicated that the earnings differential between women and men seemed to have widened since 1956. However, that observation was based on trends in the annual earnings of full-time, year-round workers without taking account of any changes in the qualifications of women. Such a comparison turns out to have several drawbacks. First, full-time, year-round workers are only a small proportion of the female labor force. Moreover, the category does not adequately adjust for differences in hours worked. Full-time includes any number of hours above 35 per week and women who work full-time average shorter workweeks than full-time men. We have recently calculated hourly wage and salary earnings for the 3 census years: 1949, 1959, and 1969, and we find that while the percent of female to male annual wage and salary earnings dropped from 56 in 1949 to 47 in 1969, the hourly earnings percent went from 67 to 63. The female-male earnings percent for full-time, year-round workers, went from 63 in 1956 to 59 in 1969. However, there were other significant changes in the female labor force over the 20-year period.

Women in the labor force in 1949 were on average more educated than men. But the educational attainment of men advanced much more rapidly than women's over the 20-year period—perhaps because of the inducements of the GI bill. By 1969, men and women were about even in educational attainment. Adjusting for education, therefore, reduces the hourly earnings percent to 63 in 1949 but leaves the 1969 percent unaffected at 63, thus eliminating the widening trend in the sex differential.

Another important change was the increase in married women in the labor force. In 1950, married women were 47 percent of the female labor force; in 1970, they were 57 percent. And the married women in the 1950 labor force averaged 1.7 children compared to 2.2 children in 1970. It seems likely that as a result of these changes, the average experience level of women in the labor force also declined. Taking these changes into account suggests that the earnings gap that can be attributed to discrimination as opposed to experience has probably been narrowing or at least has not widened. We also anticipate that the observed data will begin to show this improvement within the decade. Younger women are having fewer children, more carefully spaced, and are leaving the labor force for shorter and shorter periods. These women will have considerable continuous work experience and this should show up in their earnings.

Considerable evidence is given in the economic report on the difference in the occupational distribution of men and women. We did not

discuss the more complicated question of what effect these occupational differences have on the average earnings of women. Having investigated this question, we find some perhaps puzzling results. The occupations that women pursue do not seem to be necessarily lower paying occupations. Using 1959 census data, it has been shown that, if women were to continue to earn average women's earnings (within each of 292 detailed occupations) but were redistributed so that their proportions in the different occupations were the same as men's their earnings on average would be increased by only 3 percent. Similarly, if men were given the occupational distribution of women, their earnings would be reduced by 5 percent. Women are clustered in some occupations, but these are mainly white collar occupations, paying wages close to the national average. Women are severely underrepresented in the prestige professions and in top management; but these occupations are not the dominant male occupations. The three leading occupations among men in 1970 were truckdriver, farmer, and janitor. Indeed, there were more male janitors (1.1 million) than there were male doctors, dentists, lawyers, judges, and physical and social scientists put together. In 1969, the leading female occupation was secretary, followed by retail sales clerk, bookkeeper, and elementary schoolteacher.

Considerable stereotyping of occupations certainly exists. Women and men do not freely choose an occupation. To some extent the occupational choices of women have been influenced by societal pressures and by prejudice and to some extent they have probably been second-best accommodations to a dual career. Although increases in the representation of women among the elite occupations may not have a big direct effect on average earnings of women, the symbolic and indirect effects should not be minimized. Upgrading women at the top of the ladder should provide great encouragement to all women.

Institutional barriers undoubtedly exist, barring women from particular occupations. Moreover, within even the detailed census occupations, there is considerable heterogeneity and women, having made a general career choice, may well find it difficult to advance within their occupation. These are matters which we hope to investigate in much more depth.

The matter of the differentially high unemployment rate for women is discussed in considerable detail in the economic report. However, it is a subject which is often misunderstood. The unemployment rate of adult women is higher than the unemployment rate of men primarily because the female labor force has been increasing much more rapidly than the male labor force and this automatically generates a larger proportion of labor force entrants—people who are coming into the labor force for the first time or after a period of time. And these people typically have a much higher unemployment rate when they are coming back into the labor force. They include Vietnam veterans who have a very high unemployment rate the first few years, and then later, as they get a little older, their unemployment rate actually drops below that of nonveterans.

Or in the case of migrants, we find for the State of California in the fifties and sixties, when a lot of people were flowing in, that State had a higher than average unemployment rate, although its rate of growth of economic activity was very high. A high rate of unemployment is always associated with a high rate of labor force entry.

We tried to look at what the unemployment rates would be, taking out the labor force entrants from both the numerator and the denominator. And we found that under those circumstances the rate for women and the rate for men are essentially the same. The rates were 3.1 for women in 1972, and 3.0 for men. In May of 1973 this rate, excluding new entrants and reentrants, was 2.2 percent for both men and women over 20. I must stress that those levels are not meaningful. I am not saying in this way that the unemployment rate was really 3 percent in 1972 or 2.2 percent in 1973. The levels are strictly statistical artifacts in which we attempt to take account or attempt to try to segregate out certain effects from other effects. What is significant is that they suggest that the differential in the measured unemployment rates is due to the phenomenon of entry and reentry. It is only the comparisons that are a relevant number, not the levels.

What happens, of course, is that entering the labor force automatically triggers search for a job, and therefore a measure of unemployment. And it is for that reason that all groups with a large component of entrants into the labor force have a high unemployment rate.

The important question here about entrants is, (a), how long it takes them to find jobs, and (b), how suitable are the jobs that they find. This latter question, which may be the more important, is not captured by the unemployment rate. If we compare the duration of unemployment of male and female reentrants, however, we find much shorter duration for women than for men. During 1972, the median duration was 4.2 weeks for women reentrants and 7.5 weeks for men. Similar differentials prevail today. One interpretation of this phenomenon is that men may search longer for a job because they expect to stay in the labor force permanently. Some women are seeking temporary employment and many may be uncertain. Another interpretation would be that women become so discouraged by the selection of jobs open to them that they settle for one fast. As women become more career oriented, the combination of high rates of labor force expansion with longer search periods for the entrant into the labor force could push up the measured employment rate for women still more. But if the longer search results in better jobs, this would be a favorable development. We think, therefore, that the major thrust of public policy should be on improving the employment prospects for women, and not a narrow focus simply on lowering the measured female unemployment rate. The reported number itself is just not a good indicator of women's well-being.

In summary, I think that we have found that the economics of women shares at least one characteristic with economics in general. Things are seldom what they seem, and what everyone knows, including what every woman knows, is often not true. This is not at all to deny that there are serious problems in obtaining equal economic status for women and in making full use of women's capabilities. On the contrary, it is to emphasize that in order to prescribe effective remedies for serious problems they must first be identified correctly, and this will require a good deal of intensive analysis. For this reason we applaud the effort of your committee in initiating serious congressional study in this field. We hope that our efforts can be helpful to you.

Thank you.

Representative GRIFFITHS. Thank you very much.

In my judgment, you have presented a sort of cheering, comforting little statement, that from a good job on the Potomac, things don't really look too bad for women. And you have laid heavy emphasis on the fact that work experience is the thing that really is keeping women from drawing better wages; you have neglected to point out that the average earnings of young male college graduates, aged 25 to 34, is \$10,677. For women in that group it is \$5,812. How can you connect that with work experience? You really can't. There is no need to try. This is simply discrimination, that is all there is to it. After pages of statistics, which in many instances I question, the truth is that the statute which sets up the Council of Economic Advisers states specifically that the Council of Economic Advisers is required to formulate and recommend national economic policy to promote employment, production, and purchasing power.

Why, Mr. Stein, did you fail to recommend an economic policy for women?

#### TESTIMONY OF HON. HERBERT STEIN, CHAIRMAN, COUNCIL OF ECONOMIC ADVISERS

Mr. STEIN. Well, of course, we think that women are part of this country, and that the policy which we have recommended for increasing employment in total has served very substantially to increase the employment of women. But we recognize that the Council of Economic Advisers, and the whole science of economics, I would say, over the course of its history has been backward in attacking this problem. And we finally, after 25 years of the Council of Economic Advisers, undertook some study of this question.

Now, we are not prepared to recommend a differential policy. We are working with our advisory committee to see how we can best advance the cause of women in employment, and not only in reducing their unemployment, but in increasing their access to jobs. And we hope that we will make a contribution. I recognize that we are at an early stage of this. But I would hope you would also agree that it is better to be at an early stage than at no stage.

Representative GRIFFITHS. I think it is great. But you keep pointing out that you need to analyze the whole thing. And you point out that of the number of new entrants into the labor force, women are a large group. Mr. Stein, women have been the largest group of new entrants into the labor force since 1900. For 73 years they have come into the labor force in increasing numbers.

Now, part of your duty also is to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2 of the Employment Act of 1946, which specifies a national policy to promote maximum employment, production and purchasing power, for the purpose of developing the extent to which such programs and activities are contributing, and the extent to which they are not contributing to the achievement of such policies. What work have you done on that?

Mr. STEIN. With respect to women particularly?

Representative GRIFFITHS. Yes, indeed.

Mr. STEIN. We have done some work on a number of questions related to this. For example, we have looked into the child-care question. We have not as a group come to a recommendation about that. We have, with our advisory committee, met with and heard a description of programs run by the Office of Education, the Manpower Administration, the Job Corps, and have taken the opportunity to expose to the officials of these agencies the interests and information of the members of our committee, most of whom are women, about the effectiveness of these programs. I will agree again that we are at an early stage of this. And a relatively small amount of the time of the people you see at this table is devoted to this question.

Representative GRIFFITHS. This administration is very anxious to cut expenses, isn't it?

Mr. STEIN. Yes, indeed.

Representative GRIFFITHS. The number of families receiving aid to families with dependent children has risen from 50,000 in 1950 to over 3 million today. Only about a fifth of these has a man in the family. All of them have a woman. The cost of it, as I recall looking the last time, is something like \$11 or \$12 billion for the Federal Government. So that if you begin to cut down on the number of unemployed women, you are going to reduce that figure, aren't you? It would be a very large savings.

Mr. STEIN. We have reduced the number of unemployed women. The number of unemployed women has declined from a year ago.

Representative GRIFFITHS. But that is people looking for work, isn't that right? Isn't that the way you check unemployment?

Mr. STEIN. That is the way unemployment is defined, yes.

Representative GRIFFITHS. That is right. So that these have given up, they have gone on welfare. But if you find jobs for those women, if you create an atmosphere in which they can get jobs, you can cut down that \$11 billion expense.

Mr. STEIN. Well, as you know, we proposed a program with respect to the welfare effort.

Representative GRIFFITHS. I supported it.

Mr. STEIN. Yes; and we are grateful for your support. And we would welcome other suggestions for attacking this problem.

Representative GRIFFITHS. OK, I will give you several.

Have you checked up on the EEOC lately to see what they are doing for women under title VII?

Mr. STEIN. No; I haven't.

Representative GRIFFITHS. Have you checked up to find how many cases the Attorney General has started, and how many group cases, to see to it that women are given equal pay?

Mr. STEIN. No; I haven't.

Representative GRIFFITHS. Have you checked to find out how the Executive order of the President is being applied in respect to discrimination against women by Federal contractors?

Mr. STEIN. We have not regarded those matters of law enforcement as being our primary function.

Representative GRIFFITHS. It says right here:

Appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2, for the purpose of determining the extent to which such programs and activities are contributing and the extent to which they are not contributing.

And I can tell you right now, EEOC and the Attorney General aren't doing anything.

Mr. STEIN. Well, Mrs. Griffiths, that is a charter which, if given to an organization of about 15 senior staff people, requires the exercise of a certain discretion or selectivity in choosing what is to be studied and what is not to be studied. And I am sure you can find a very great many aspects of Federal economic policy that we have not studied. When we embarked upon this effort in the field of women, when our advisory committee was set up, it was agreed that those matters of law enforcement, while important, were not the most important things for us to look at. We don't even have a lawyer on our staff. So that we have tended to leave that to the province of others. There are other people in the administration who are concerned with these things.

Representative GRIFFITHS. But they aren't. You don't need to look at rights enforcement for men. All you need to do is to press down upon the usual economic indicators, create more jobs, and they get them. But as far as women are concerned you should be doing something different. And you ought to be looking at the tax structure as to how it applies to women, and how the laws apply to women.

Let me give you the case that I consider the saddest that has come to my attention recently. A woman wrote me from my district. She went down to apply for her social security. She had worked 34 years, 34 consecutive years in the labor market. She was applying for social security. And they asked her, were you ever married?

And she said, yes, I was.

Did your husband pay any social security?

Yes, he did.

Well, bring down that number.

She brought down the number.

Her husband had died in 1939. He had paid in the social security for 27 months. Under his entitlement she got more money than she did under her's, after 34 years in the labor force.

Now, in the first place it makes a real lie out of any idea of barring attachment to the labor force as one of the real reasons why women don't get higher wages. She had attachment to the labor force, a real attachment, through three wars and inflation. Obviously, that woman was drawing less money than a man did before 1939.

And I would like to ask you, on this comparison of men and women who have been in the labor force for 20 years, you keep pointing out that women are doing very well indeed. Which women were attached to the labor force for 20 years? Now, you must have had a time between 1949 and 1969 that you figured this, isn't that right? Who would those women have been? Wouldn't they in general have been teachers, nurses, stenographers? Wouldn't that be right?

Mrs. WHITMAN. Since those are the occupations in which women are chiefly represented, yes. However, we were not comparing men and women with 20 years' experience. Our statement was based on an analysis which estimated the change in women's earnings associated with an additional year of women's experience and the same sort of analysis for men.

Representative GRIFFITHS. Now, you are comparing those women with all men, with men with little or more education. So your statistics really don't mean anything. If you had compared them at equal eco-

conomic levels, what would they have been, at equal levels of education, what would they have been? You would have found out something like that \$5,000 difference between men and women.

Mrs. WHITMAN. Education is adjusted for in those figures we gave. We are comparing people with the same levels of education.

Representative GRIFFITHS. Which women did you compare to which men? Did you compare them with the men in the teaching field?

Mrs. WHITMAN. I am sorry, but the way we get statistics, we cannot get them cross-classified in every way we would like. We have statistics which tell us that we are comparing men and women with given levels of education, men and women who are high school graduates or who have some college, or men and women who are college graduates. Some more detailed data are now being collected for the future, but there is no way we can go back into the past and get data which were not collected at that time.

Representative GRIFFITHS. Let us try, then, another tack. You pointed out that men were clustered in jobs of truckdriver, and janitor, and what else?

Mrs. WHITMAN. Farmer.

Representative GRIFFITHS. Do you know, Mrs. Whitman, what the average truckdriver makes?

Mrs. WHITMAN. Not off hand, no.

Representative GRIFFITHS. I would be glad to tell you. They are getting now toward a salary of \$25,000 a year. Now, they are moving toward that, I read the other day, they are going to work toward that. They get their meals paid for when they are on the road, they get some glorious fringe benefits. Do you care to compare that with a stenographer, or a grade schoolteacher?

Mrs. WHITMAN. I am sorry, but I don't believe that the median income of truckdrivers is any thing like \$25,000.<sup>1</sup>

Representative GRIFFITHS. It is not yet that. But the median income of truckdrivers would be \$16,000 or \$18,000.

And now I would like to raise a second question. On this business of janitors, are you aware that in the Bell Telephone Co. case that janitors the first day they were working made more money than long distance operators of 20 years standing? That was one of the corrections that the court made with Bell Telephone. So that in reality when you are comparing even these jobs the answer is that those jobs for men are incredibly higher paid than jobs for women with a tremendously greater education.

Mr. STEIN. But, Mrs. Griffiths, I think your comment doesn't go to the point which is being made here. The point that is being made here, and the point of this calculation, was to say that, suppose the women had been distributed in all the occupations in the same propor-

<sup>1</sup> According to the 1970 Census, the average annual wage and salary income (in 1969) of male truck drivers was \$7,556. On an hourly basis that would be \$3.57 an hour; women who were secretaries earned \$2.97 an hour in that year, 83 percent of what male truck drivers earned. Of course some truck drivers do earn more than \$25,000 a year, but they were less than 1 percent of all truck drivers.

EDITOR'S NOTE.—According to the Teamsters Union, truck drivers covered under the largest collective bargaining contract earn \$6.10 per hour, which amounts to \$12,688 per year excluding overtime. This hourly wage rate applies to local drivers; however, long-haul drivers earn considerably more. According to industry sources, long-distance truck drivers are paid 16 cents per mile or an average of \$18,000 per year.

tion as men, what would have been the average earnings of women, assuming that women in each occupation got the same earnings as the women in that occupation did.

Representative GRIFFITHS. The same earnings as the men.

Mr. STEIN. That is right. The point of the comparison was to isolate how much the difference in the earnings of women and men—and we are not disputing the difference in the earnings of women and men, we are asking, how much of the difference of the earnings in women and men is due to the occupational concentration of the women. And we find out that that is very little. It may be that all women truckdrivers get a lot less than men truckdrivers, and all women janitors get a lot less than men janitors. And all women farmers get a lot less than men farmers. That would not be contested by the information we have here. We are saying that the fact that there are a lot of women secretaries, stenographers, schoolteachers, and so on, is not what is causing the problem. The problem is caused, so far as these statistics go, by the fact that within each of these occupations the women get less than the men.

Representative GRIFFITHS. Mr. Widnall, would you inquire?

Representative WIDNALL. Thank you, Mrs. Griffiths.

I would like to add to the welcome given to you by Mrs. Griffiths in appearing before the panel today.

Mr. STEIN. Thank you very much.

Representative WIDNALL. It seems to me that it is a matter of urgent necessity for us to get more facts and figures and solve some of the problems in connection with women in the work force.

In the statement you stated:

There is evidence that at least 45 percent of the difference in the hourly earnings between men and women can be traced to differences in experience. On the other hand, there appears to be a residual of at least 30 percent of the differential that cannot be clearly attributed to differences in experience or other qualifications and that can, therefore, be regarded as the result of discriminatory treatment in the labor market.

Can you summarize this evidence for us? Do you consider that this evidence is fairly sound?

Mrs. WHITMAN. This evidence comes from one particular study which has made use of the National Longitudinal Survey which, as I say, provides the first data that we have had on lifetime work experience of women. And it represents a statistical analysis, a regression analysis which attempts to isolate insofar as a quantitative analysis can the different factors which contribute to this very large differential in average earnings between men and women. The results are inevitably tentative. The very nature of this kind of analysis is that it is tentative, it is always subject to revision in the light of more information and better information. It does happen that there are a few other studies, much less comprehensive, which tend to corroborate at least the part which suggests that perhaps 30 percent of the sex differential in earnings appears to be unexplainable by factors that take into account qualifications, and that therefore appears to be due to discrimination. Now, it is tentative evidence, and the margins of error are very broad. As I say, we can't say whether it is 10 percent or 30 percent of that differential. We can't say whether 45 percent of the difference in hourly earnings, or as much as 70, is due to differences

in work experience. It is very tentative information. What we do know is that it is better than no information at all. But it is constantly subject to revision in the light of new information and new analysis as it becomes available.

Unfortunately, this is an area in which data have not been available. And this is an area where an enormous amount needs to be done. We are just beginning to be able to get some of the information we would need to analyze this question of the labor force experience of women. A number of the questions that Mrs. Griffiths has asked we can't answer because we don't have that kind of information. Some of it is going to become available now. We will have more information on the lifetime work experience of women, but we won't be able to go back in the past with it and make comparisons. We can't even get direct data on hourly earnings for men and women separately. All you can do is take annual earnings and divide them by the average hours of work, which is only an approximate kind of statistics of actual earnings of men and women. So this is an area which has been badly neglected. There are beginning to be changes in the Federal agency which collects these statistics. But these changes are just now coming. Until recently we didn't have much economic information about households headed by women as opposed to households headed by men. This would seem to be absolutely basic. But this only became available very recently.

Representative WIDNALL. When the classification of truck drivers is used as an example, do you have any kind of statistical information that would indicate the number of women that want to be truck drivers?

Mrs. WHITMAN. I don't believe so. Every now and then surveys are made of women's ambitions and their views of what they would like to be. But we really don't have evidence as far as I know on women's intentions in this degree of detail.

Representative GRIFFITHS. The last time I checked it there were approximately a thousand women truckdrivers. I might say that the trucks most of them drive are the schoolbus, and they don't pay them for that.

Representative WIDNALL. The point of my question was this. Some of those overland trucks involve long hours and I would say unpleasant working conditions and demand physically a different type of driver than the average woman can qualify for. And you just hesitate sometime to blanket a group together on the basis of man against woman when many times there is a complete difference in the way that the men or the women approach the job or can qualify physically for the job.

Now, I know you are treading on very dangerous ground when you talk about the physical qualifications of women. But truly there are some things that a man, who might be built more like an ape, could handle better than a woman, because of the fact that he has certain physical strength which she might not possess.

But let's come back to this. My understanding is that the statistics on men are taken from different sources. That is to say, the men's data is from the National Longitudinal Study, and the women's data is from the Parnes data base. Is this true?

Mrs. WHITMAN. Actually, the women's data are from the National Longitudinal Survey, which is the Parnes study. The men's data are from the Survey of Economic Opportunity.

Representative WIDNALL. Would you say that that is a good technique to use for comparison?

Mrs. WHITMAN. If they are both accurate samples, yes. And they are both scientific samples, taken on a national basis and as far as can be ascertained, are both reliable and comparable. And the alternative is to have no information at all. We do indeed approach the data we use with extreme caution. And we try in every way possible to take into account possible biases. But when all is said and done, one has to either use the figures one can get, or simply have no information at all. And we do feel that what we have is a great deal better than none, although much less than we would like.

Representative WIDNALL. You are still in the process of trial and error, because you are just grappling with the problem right now, actually. There have been studies made in the past, and we try to refine these studies. And Mrs. Griffiths has been heroic in her efforts to get at the bottom of the whole subject matter, the problems that are involved.

And I want to pay you a tribute right now for all the work that you have done in the field that has been definitely left alone by most Members of Congress and by people outside of Congress. And nothing but good can come out of the work that has been done by Mrs. Griffiths.

Mr. Samuelson has suggested in his statement that by using women to their full productivity potential we can achieve an increase of between 10 and 15 percent in our living standard. What is your response to this figure? It would seem that the costs of discrimination are fairly substantial.

Mr. STEIN. I haven't seen his statement. And I would want to know what is implied by that. Of course, if it is implied that as large a proportion of women as of men work in the marketplace and produce gross national product, then we would have a difficult question of how we allow for the value which women produce outside the marketplace which we would presumably use. But I have no doubt that the number is a significant one, whether it is that particular number or some other I don't know, but we think that it is a significant number.

Mrs. WHITMAN. May I respond to one comment Mr. Widnall made with respect to the question of whether women are not truckdrivers because they can't be or because they don't want to be?

Data cannot readily give you the answer to the question as to whether these differences exist because of discrimination or because of what you might call differences in desire or taste or suitability. But the fact is that as long as discrimination exists you will not find out how many women would be truckdrivers if they could be, and how many women indeed do have the physical and emotional characteristics to make good truckdrivers—and quite clearly there are some. As long as discrimination exists you will not be able to find out what proportion of women are not in some occupations because they don't want to be and what proportion for other reasons; you have to test it by having fields open to women before you can find out. Free and open entry in a large number of fields does not exist today. Clearly,

many women are not outside of these fields simply by choice, but in some cases at least because they find it difficult or impossible to get in.

Representative WIDNALL. In thinking about figures and statistics with respect to employment, I was over in England several weeks ago for the first time. And while I was there I spoke to a number of low-income people in various fields in the country. And the unanimous response I got from those who were in the low-income brackets was that there are plenty of jobs in England, but there are many, many hundreds of thousands who just don't want to work. I can understand the difference between jobs that you can perform or cannot perform, or the difference in the criteria that are used to fill the job, and whether or not a person would like to work in that kind of work. But they all said to me, our unemployment figures aren't as horrendous as they appear in the newspapers, because there are many, many jobs here that will keep the family going and provide sustenance, and yet they have no takers.

I think that that is sometimes true as far as our own country is concerned in certain sections of the country. And it is a problem we have got to do a better job with.

But I don't think statistics are the entire answer. The attitude of the people has a lot to do with whether or not we can solve many of our unemployment problems and employment problems. Discrimination against women has been clearly proven in the past, and every day more and more glaring examples will assist through these hearings in finding a better capability of our country to deal with a problem that is very basic and does need very great attention.

My time is up.

Representative GRIFFITHS. One of the reasons I assume that some people don't want to work in England or here is that the loss in welfare is so great that they can't afford to do it. In England I believe they have found that in some projects they would lose 150 percent of what they earn. So that it is prohibitive to do anything about it.

May I ask you, Mr. Stein, what priority are you giving to labor market policies as they affect women?

Mr. STEIN. Well, we have two main efforts as far as the Council of Economic Advisers are concerned, two main efforts with respect to labor market policy. One has to do with youth, and the other has to do with women. The women's activity is very largely, although not entirely, concentrated in our work with the advisory committee, and with the study—I don't know whether anybody has referred to the study that is being done at our initiative through the OECD this morning. But at our suggestion the OECD, which is an international organization, undertook a study of the economic position of women, including the employment of women, in the member countries. And a study of the situation in the United States, both descriptive and analytic, is now going on under our direction, specifically under the leadership of Mrs. O'Neill, with the cooperation of the Departments of Labor and HEW, and perhaps some others, that does take a good deal of our limited resources. We are very concerned about the youth unemployment problem. And we head up an interagency task force which is working on that.

So I can't give you a proportion. As I have said earlier, we have about 15 professional people, about two generally are in the field of

labor market policies and related matters, and perhaps a third of their time is devoted to women.

Representative GRIFFITHS. What studies have you conducted, if any, on how training programs can aid women?

Mr. STEIN. This is being done as part of the national study in connection with the OECD. And as I have said earlier, we did review in our committee with the Assistant Director of the Manpower Administration, Mr. Marland of HEW.

Representative GRIFFITHS. Why didn't you recommend that they change the name of the Manpower Administration.

Mr. STEIN. Well, I am glad you asked me that. In fact, we discussed that with Secretary Brennan just the other day, and he says he is going to call it the Human Power Administration. And in fact in an economic report about 2 years ago, I personally went through the whole thing and took out the word "man-hours" wherever it appeared, but I found out it was too tedious, and I got very little thanks for it.

Representative GRIFFITHS. Thank you.

Women comprise almost 40 percent of the labor force, and yet they represent only 31 percent of those enrolled in JOBS. Only 28 percent of those hired under the Public Employment program are women, only 26 percent of the Job Corps enrollees, and only 22 percent of those in jobs under the MDTA on-the-job training program. Do you really think that this is a commitment to ending unemployment and discrimination among women?

Mr. STEIN. I don't think that it is obvious that the criteria for those programs would give you equal proportion of women in all of them to the proportion of women who are in the labor force. There are certain criteria about being disadvantaged, perhaps in some cases by family responsibility. I don't know that there is discrimination in these programs. I don't think those proportions by themselves would show that there was discrimination.

Representative GRIFFITHS. One of the things that really shows the problem that you face, though, is the number of families headed by mothers alone. The nice conservative U.S. News and World Report carried an article just yesterday which shows that the number of widows from 1965 to 1972 went up 3 percent, divorced and separated females heading families, up 58 percent, and single females heading families, up 80 percent. It shows you the problem. That amounts to something like 6 or 7 million women. The failure to train those women for jobs means that you have to support many of them on welfare, and all those children.

Mr. STEIN. We are really not supporting all of them on welfare—

Representative GRIFFITHS. You are not now. Some of them have jobs on their own.

Mr. STEIN. Most of them do. There has been a great increase in the employment of women as we show here.

Representative GRIFFITHS. What we need is to push, to see to it that women are given job training, and they are looked at in the matter of placement in employment.

Mr. STEIN. I certainly agree with you. That was one of the advantages, we thought, of the country's turning its attention to this kind of problem, so that we might have some influence on the manpower policy,

the employment service, the training programs, and so on. We don't have very long standing in this field. And I hope we will do something about it.

Representative GRIFFITHS. The cliché that women quit their jobs at a much higher rate than men is often used as an excuse for not hiring women. And yet Labor Department statistics for 1968 indicate that in 8 out of 21 manufacturing industries the female quit rate was equal to or less than that of males. However, these statistics have not been collected by the Labor Department since 1968. Do you have any knowledge of why they quit collecting them?

Mr. STEIN. No, I don't. I know the significance of those figures have been the subject of some controversy.

Maybe Mrs. O'Neill could explain.

Mrs. O'NEILL. I think the point that we have made here doesn't have to do with the quit rate, but with the continuity of experience. Men can quit very frequently and have short intervals between jobs. Quits are generally high when employment opportunities are very good. And this does not necessarily detract from their acquisition of experience and qualifications and from their advancement, whereas a quit to remain out of the labor force for a reasonable period, which is more often the case with women than with men, does reduce the rate at which a person acquires competence and standing. And in fact as this study referred to shows, absence from the labor force has not only resulted in a lack of progress but actually in a retrogression at least in relative qualification.

So we have not made any particular point of the quit rate. We are making a point of the continuity of experience.

Representative GRIFFITHS. It would be a nice idea if we published this for employers, because many of them assume that because one woman quits that all women quit jobs, and the truth is that the average young man quits his first job much more rapidly than the average young woman quits her job, and they probably all quit for the same reason—dull, boring jobs.

I would like to thank all of you for being here. I would hope that you would turn your attention in a much larger way to the employment of women. I appreciate what you have done. But I hope that you carry through and that you will see to it that programs are set up for women, and that you check as to how these programs are being used, and whether or not the law is being enforced as written.

Would you like to ask another question?

Representative WIDNALL. I would like to ask one other question.

Mr. Stein, in the statement, as presented by Mrs. Whitman, you compare the hourly earnings of single white women and single white men. You state that according to a study sponsored by the Labor Department, single white women in the study, in the study sample, had hourly earnings equal to 86 percent of the earnings of men in the sample in the same age group. What was the composition of the study sample?

Mr. STEIN. Will you answer that, Mrs. O'Neill.

Mrs. O'NEILL. It was a much more complicated study using analysis. As mentioned earlier, this is a comparison from the two samples where the data for women came from the National Longitudinal Survey, and the data for men from the Survey of Economic Opportunity.

Both surveys referred to 1966, and men and women in the same age group. And that comparison showing a ratio of 0.86 was single women compared with married men. If you compare single women and single men, the difference would be much closer, because single men earn much less than married men of the same age.

Representative WIDNALL. Wasn't a large part of it composed of young single adults, 16 to 24?

Mrs. O'NEILL. No; the ages were confined to 30 to 44 years in both studies and the earnings comparison refers to men and women in that age group.

Representative WIDNALL. I was wondering about the age grouping, because it could seriously bias the sample.

Mrs. O'NEILL. No, sir; that is adjusted for age, 30 to 44 years.

Representative WIDNALL. Thank you.

Representative GRIFFITHS. We would like to submit additional questions for the record if you would answer them, because we need to get onto the next witnesses. I would also like to point out on your statistics showing that men earn so much more, and accounting for it by the longer hours, the truth was that the law prohibited women from working overtime. That is now done away with. So you need some new statistics.

Thank you very much.

[The following information was subsequently supplied for the record:]

RESPONSE OF HON. HERBERT STEIN TO ADDITIONAL WRITTEN QUESTIONS  
POSED BY REPRESENTATIVE GRIFFITHS

*Question 1. If the Equal Pay Act, Title VII and Executive Order 11246 were enforced, women would receive equal pay for equal work. Would there be an inflationary effect of paying equal wages to women for equal work? If so, what would be the magnitude of the inflationary impact, in the short run; in the long run? How would the demand for women's services in the labor market be affected if women were given equal pay for equal work?*

Answer. First, totally effective enforcement of the Equal Pay Act might cause a very short run push on prices, but this would not be a very lasting or important effect. A more likely, and potentially more important effect of more rigorous enforcement of Equal Pay legislation would relate to employment. Presumably the prejudiced employer who does not pay women equally for the same work done by men, is exacting a compensation for employing women and is only indifferent to whether he employs a woman or a man if he can pay women less. The Equal Pay law coerces the employer to pay women the same as men, but it would not necessarily change his discriminatory attitudes. Thus, his prejudices are more likely to take the form of a disinclination to hire women. In this case, wage rates of women rise relative to those of men, but at the expense of employment of women relative to men. Indeed, an empirical study of the effect of Fair Employment Laws on blacks has concluded that these laws did have the effect of raising wage rates of blacks relative to whites, while at the same time reducing employment of blacks relative to whites. On balance though, annual incomes of blacks did rise relative to whites, but by less than the relative wage increase.

It should be noted, however, that unequal pay for the same job in the same plant does not appear to be a major source of earnings differentials between the sexes. That is, the few Department of Labor studies that have been made on the subject, show men and women working in the same establishment generally earn close to the same pay for the same job. But a large proportion of women and men work in virtually single sex plants and the largest pay differentials occur between plants employing mainly women and plants employing mainly men.

Title VII and Executive Order 11246 presumably work in the direction of eliminating plant segregation by sex and of preventing discrimination in hiring and promotion which serves to allocate women to lower job levels than men (even within an occupation). More effective enforcement would mean that work-

ers (men and women) would be more efficiently allocated according to individual talent rather than sex, which would in turn increase productivity and raise real national income—a counter to any inflationary effect.

The magnitude of all these effects is very hard to predict. The greatest problem in achieving perfect enforcement of Title VII and Executive Order 11246 would be the greater cost of obtaining information on the quality of worker attributes than on pay rates for job slots. This makes it more difficult to prove discriminatory hiring and promotion practices than violations of the Equal Pay Act because illegal dual pay systems are easier to spot. Perhaps a major benefit of all the Equal Opportunity legislation is that eventually prejudices will change as the law begins to convince people that prejudice is morally as well as legally wrong.

*Question 2. In your statement you said "the occupations that women pursue do not seem to be necessarily lower paying occupations. Using 1959 Census data, it has been shown that, if women were to continue to earn average women's earnings (within each of 292 detailed occupations) but were redistributed so that their proportions in the different occupations were the same as men's, their earnings on average would be increased by only 3 percent." If this is an attempt to assess the effect of crowding women into only a few occupations, it does not seem adequate. Eliminating occupational segregation by sex would not leave wages of women constant within each occupation, but would almost certainly raise them. As Dr. Bergmann, one of our other witnesses, pointed out, wage rates of women in clerical jobs are low partly because women were kept out of other occupations and were crowded into clerical jobs. Allowing women to enter "men's jobs" would probably reduce wages in those jobs by raising the supply of potential workers. Wages in "women's jobs" would rise as fewer women became available. Thus, it seems that you vastly underestimate the effect of eliminating occupational segregation by sex. Please comment.*

Answer. What we tried to make clear in our presentation is simply that the averages standardized by occupation show that if women were to leave the occupations they now dominate and were to array themselves among occupations the way men are, their average earnings would not rise by much. And if men were to leave the occupations they dominate and were to divide themselves among occupations the way women are now divided, their wages would not fall much. This is because if one looks at the entire array of occupations, and not just one or two examples, men are not by and large in very much higher earnings occupations than women. (In fact, earlier in the century, women were in higher status occupations than men, since women were at one time even more disproportionately white collar workers than they now are, while men were very much more likely to be in very low status manual labor jobs.)

Thus, if women were to leave the clerical occupations in large numbers, it is true that earnings would rise in those occupations (but fewer women would be in them to take advantage). If women were then to enter the so-called male occupations, earnings would fall in those occupations. And, as our calculation shows, those "men's occupations" to begin with, are a mix of occupations, some paying more than the "women's occupations" and some paying less, but on balance, averaging only a trifle higher. Thus, there would be an offset to the rise in earnings of those women who remained in the clerical occupations.

Perhaps the point can be made in a more specific way. Hourly wage and salary income in 1969 for male clerical workers was not low. In fact it was one or two percentage points above the average earned by men. Thus a large proportion of men were in occupations which are lower paying than the clerical occupations. Average hourly earnings of women are low, then, not mainly because they are disproportionately in the clerical occupations, but because in each occupation (including clerical) they earn less than men.

*Question 3. Statistics show that at the same level of education, women are disproportionately shunted into lower paying, lower status jobs. It is a well known fact that the average woman college graduate working full time, all year, ends up with the same income as the average male high school dropout. How can we go about measuring the economic costs in terms of foregone GNP for this gross underutilization of human potential? What effort has the Council of Economic Advisers made to measure the lost GNP due to sex discrimination in employment?*

Answer. In order to measure the cost of discrimination, one must know how much of it there is. Recently, economists have begun to measure the amount

of the sex differential in earnings that is due to productivity differences and we reported on these efforts in our testimony. The amount due to discrimination in the labor market has been assumed to account for the entire residual or unexplained portions of the differential. Actually, this would overstate to an unknown degree the amount of the differential due to labor market discrimination. Until the estimates are refined further, it would be difficult to make an estimate on the loss of GNP with accuracy. However, we believe that the current loss in GNP due to misallocation of women could be considerable.

*Question 4. You discussed in your statement the fewer years of work experience among women and the effect that this can have on earnings. You stated: "A vast amount of skill appears to be learned on the job. This is believed to be the reason why earnings increase so much with years in the labor force. Among men, this is evident in the sharp increase of earnings with age. . . ." This way of looking at the effect of experience seems to assume that the labor force entry and exit choices of women are fixed. In fact, women may choose how long to stay in the labor market on the basis of which careers are open to them. By taking this point into account, wouldn't the amount of the male-female wage differential attributable to experience be reduced? In many female occupations, isn't it true that there is very little penalty associated with entering, leaving, and reentering the job market?*

*Answer.* The estimate of the amount of the earnings differential due to experience was based on a study with examined the earnings of women with varied amounts of experience. The study shows that experience does count for women—that their earnings do rise as they accumulate more years of experience and also that continuity of experience (as opposed to intermittent participation) commands a premium. Those women who do not anticipate long, continuous years in the labor force may well choose jobs where there is little penalty for intermittency, and that would reflect rational behavior. It probably explains, to some extent, why women and men have different occupational distributions.

We agree with you that there may be indirect effects from labor market discrimination on women's participation in the labor force and, hence, on the amount of experience they accumulate. Discrimination may also operate to lower the quality of experience women may receive.

Representative GRIFFITHS. Our next witnesses are Mrs. Barbara Bergmann and Mr. Paul Samuelson.

Mrs. Bergmann, who is director of the project on the economics of discrimination at the University of Maryland, is one of our foremost economists on the economic problems of women. She has been a senior staff economist with the Council of Economic Advisers and with the Brookings Institution. Mrs. Bergmann has published papers on occupational segregation, and unemployment and labor turnover of women, and she will soon publish a critique on the chapter on women in the President's economic report.

Mr. Paul Samuelson, who received the Nobel Prize for his economic research, needs no introduction to this committee.

We have often benefited from his succinct analysis of current economic conditions. He has recently released a ninth edition of his highly successful and popular textbook, "Economics." I was pleased to see a chapter on racial and sexual discrimination included in the most recent edition.

We welcome both of you to this committee and look forward to your testimony.

So that we will have time for questions, I ask that each of you limit your oral statement. We will put the full statement in the record. And if we do not have time for all the questions, we will submit them to you, and you will answer them for the record.

Thank you very much. And you may proceed, Mrs. Bergmann.

**STATEMENT OF BARBARA R. BERGMANN, PROFESSOR OF ECONOMICS AND DIRECTOR, PROJECT ON THE ECONOMICS OF DISCRIMINATION, UNIVERSITY OF MARYLAND**

Mrs. BERGMANN. The relative economic position of working women has been worsening and is going to worsen further, unless a program which gets to the heart of their problems is created and vigorously enforced. The Economic Report of the President of January 1973 tells us: (1) That women's unemployment is 35 percent above men's and that the male-female unemployment differential is getting worse, (2) that women's earnings are 60 percent of men's and that the trend in the ratio of women's to men's wages is downward, (3) that there has been no progress in breaking down occupational segregation despite 5 years of campaigning by the women's movement, and (4) that millions of women and their children who live in households without men are in dire material need.

The major reality behind the inferior and worsening relative position of women in the labor market is the persistence of employers' notions about which kinds of jobs are women's work and which kinds of jobs are men's work. The direct result is an extreme degree of occupational segregation: Currently about 70 percent of women work in occupations in which women predominate, or are over-represented, and about 70 percent of men work in occupations in which men predominate. Every decennial census since 1890 has shown a rise in the proportion of women who are in the labor force, yet the notions of most employers about which kinds of jobs are appropriate for women have changed hardly at all. In 1890, women were "in their place" in clerical jobs, in elementary teaching, in nursing, in light factory work, as retail sales clerks, in domestic work. The same list is appropriate today, although since 1890 women's labor force participation rate has grown from 18 percent to 44 percent and women have gone from 17 percent of the total labor force to 37 percent. Despite some expansion in demand within some women's fields, the inevitable result has been the overcrowding of those relatively few jobs in which women are unreservedly acceptable.

Of course, many women have also considered it natural to be confined to women's jobs, and act accordingly, but increasingly many women do not have these inhibitions and the major resistance to change has been on the part of employers. If the bars come down to women's full participation in all kinds of jobs, most women would be delighted.

Overcrowding in the few women's occupation translates into lower wages and higher unemployment rates for women. The demand for women's labor is kept artificially low because of their virtual exclusion from certain fields—medicine, law, engineering, dentistry, supervisory and executive positions, the crafts—and the supply of women to the few fields where they are welcomed is artificially increased thereby. I would venture to say that the ideal of equal pay for equal work cannot be achieved without a far broader acceptance of women into jobs from which they have been excluded by discrimination. Under the current discriminatory employment and promotion practices, the law of supply and demand forbids equal pay for men and women, and the law of supply and demand is stronger than the Equal Pay Act.

May I say that I was amazed to hear the representative of the Council of Economic Advisers take the attitude that occupational segregation and the wages that women are paid are two entirely different subjects having nothing to do with each other. That is very bad economics.

Just as occupational segregation and the overcrowding it enforces means that women get 30 to 40 percent less pay than men of similar educational background and ability, after accounting for differences in experience, so also it is largely responsible for the high unemployment rates that women suffer, and for the increasing gap between men's and women's unemployment rates. Women's unemployment rates depend first and foremost on the balance between the number of jobs that employers are willing to fill with a woman and the number of women who want jobs. The increase in the proportion of the labor force which is female has outpaced the increase in the proportion of job slots open to women, and it is this disparity which has been the principal cause of the adverse developments in women's unemployment rates. The statistics on female unemployment understate the problem, because some women with no job or a job at poverty wages simply withdraw from the labor force and go on welfare.

Recently, there has been a tendency to blame women's higher unemployment rates on the women themselves. It has been asserted—and the Council of Economic Advisers has taken this line—that a major factor is women's higher unemployment rates has been women's relatively higher rate of separation from jobs and their relatively greater tendency to be entering and reentering the labor force. The research I have done on this problem leads me to believe that this is a very red herring. Let me try to explain this simply. When one woman leaves a job, the number of unemployed women is not necessarily increased thereby. There is an opportunity for an unemployed woman to go into that vacated job slot. The act of leaving a job only increases the total number of people unemployed if the job slot is left vacant. Yet the data we have indicate that vacancy rates are very low—less than 1 percent, and that vacated jobs are usually filled very quickly. Lower separation rates for women might reduce the already small vacancy rate, but it could not be enough to make a significant dent on women's unemployment rates. Thus, a greater incidence of job leaving on the part of women probably can account for only a small part—perhaps 15 percent—of the difference in unemployment rates between men and women. As to those women entering the labor force, they do have to spend some time searching. But the unemployment attributable to their search time would be very low were it not for the fact that their search time is greatly prolonged because of the shortage of job slots for them. It is not their search for work that creates the major unemployment problem; it is the refusal of most employers to consider women for any job but a traditional "woman's job."

Some analysts have argued that since women chronically have higher unemployment rates than men, and are an increasing fraction of the labor force, a given overall unemployment rate is less serious than it used to be. The implication many have drawn is that policies to fight unemployment can be relaxed. I believe the implication which should be drawn is precisely the opposite—the old weapons against unemployment need to be wielded as vigorously as before and additional

new weapons to fight the extra unemployment caused by discrimination are needed. We have a situation where a relative undersupply of men and relative oversupply of women averages out to a high overall unemployment rate. The correct policy is not self-satisfied inaction but rather the enforcement of measures which encourage employers to relieve the scarcity of men by employing women in jobs for which they have previously not been considered. This would also help the fight against inflation.

Let me skip parts of my prepared statement and go to a discussion of policy.

We need a vigorous program to improve the economic position of women, or the present worsening trends in women's unemployment, wages, and welfare dependency will continue and accelerate as more women enter the labor market. Many women don't want to be dependent on men any longer, and many of them can't. In my view, this program needs to be concentrated on two areas: ending discrimination in employment and improving arrangements for the financial support and physical care of children.

With respect to ending employment discrimination and the sex-segregation of occupations which is its main expression, we have enacted most of the necessary laws; what is still missing is an effective strategy for implementation and also the will to enforce these laws. The Office of Federal Contract Compliance has the potentiality of taking strong action against government contractors who discriminate—and may I say, all of them do—but apparently has been inactive, almost moribund. My inquiry has elicited the fact that in the years that OFCC has been operating it has debarred exactly three contractors because of discrimination against blacks or women. The resources allocated to the Equal Employment Opportunity Commission have been extremely meager, when the magnitude of its assigned task and the importance of that task is considered. Ending discrimination against women and blacks, who together are 44 percent of the labor force, is at least as large and important a task as inspecting plant and animal health, or forecasting the weather or collecting tariffs on imports. Yet the Federal agencies that do these latter tasks each employs 13,000 people, while the EEOC employs only 2,388. So a sixfold increase in the resources of the EEOC would not be out of line. In the past, virtually all of the meager resources of the Equal Employment Opportunity Commission have been devoted to dealing with individual complaints, many from relatively small firms. While this work must obviously continue, important new resources must be put into correcting non-compliance with the laws against discrimination on the part of the 500 or so largest corporations, not a single one of whom is in compliance with the law.

The recent *Bell Telephone* case should point the way. The settlement of the *Bell* case covered thousands of workers and, perhaps even more importantly, had high visibility. I think that when employers come to believe that hiring women for what are currently "men's jobs" is respectable and fairly common, they will be glad to do so. I understand EEOC is moving in the direction of taking on the large companies. It must be provided with a greatly expanded staff. At the current rate of one case a year it will get through the top 500 cases in half a millenium.

I will end here.

[The prepared statement of Mrs. Bergmann follows:]

PREPARED STATEMENT OF BARBARA R. BERGMANN  
A POLICY AGENDA FOR WOMEN'S ECONOMIC PROBLEMS

The relative economic position of working women has been worsening and is going to worsen further, unless a program which gets to the heart of their problems is created and vigorously enforced. The Economic Report of the President of January 1973 tells us (1) that women's unemployment is 35 percent above men's and that the male-female unemployment differential is getting worse, (2) that women's earnings are 60 percent of men's and that the trend in the ratio of women's to men's wages is downward, (3) that there has been no progress in breaking down occupational segregation despite five years of campaigning by the women's movement, and (4) that millions of women and their children who live in households without men are in dire material need.

The major reality behind the inferior and worsening relative position of women in the labor market is the persistence of employers' notions about which kinds of jobs are "women's work" and which kinds of jobs are "men's work." The direct result is an extreme degree of occupational segregation: currently about 70 percent of women work in occupations in which women predominate, or are over-represented,<sup>1</sup> and about 70 percent of men work in occupations in which men predominate. Every decennial census since 1890 has shown a rise in the proportion of women who are in the labor force, yet the notions of most employers about which kinds of jobs are appropriate for women have changed hardly at all. In 1890, women were "in their place" in clerical jobs, in elementary teaching, in nursing, in light factory work, as retail sales clerks, in domestic work. The same list is appropriate today, although since 1890 women's labor force participation rate has grown from 18 percent to 44 percent and women have gone from 17 percent of the total labor force to 37 percent. Despite some expansion in demand within some women's fields, the inevitable result has been the overcrowding of those relatively few jobs in which women are unreservedly acceptable.

Of course, many women have also considered it natural to be confined to "women's jobs," and act accordingly, but increasingly many women do not have these inhibitions and the major resistance to change has been on the part of employers. If the bars come down to women's full participation in all kinds of jobs, most women would be delighted.

Overcrowding in the few "women's" occupations translates into lower wages and higher unemployment rates for women. The demand for women's labor is kept artificially low because of their virtual exclusion from certain fields—medicine, law, engineering, dentistry, supervisory and executive positions, the crafts—and the supply of women to the few fields where they are welcomed is artificially increased thereby. I would venture to say that the ideal of equal pay for equal work cannot be achieved without a far broader acceptance of women into jobs from which they have been excluded by discrimination. Under the current discriminatory employment and promotion practices, the law of supply and demand forbids equal pay for men and women, and the law of supply and demand is stronger than the Equal Pay Act.

Just as occupational segregation and the overcrowding it enforces means that women get 30 to 40 percent less pay than men of similar educational background and ability, so also it is largely responsible for the high unemployment rates that women suffer, and for the increasing gap between men's and women's unemployment rates. Women's unemployment rates depend first and foremost on the balance between the number of jobs that employers are willing to fill with a woman and the number of women who want jobs. The increase in the proportion of the labor force which is female has outpaced the increase in the proportion of job slots open to women, and it is this disparity which has been the principal cause of the adverse developments in women's unemployment rates. The statistics on female unemployment understate the problem, because some women with no job or a job at poverty wages simply withdraw from the labor force and go on welfare.

<sup>1</sup> An occupation was defined as having an over-representation of women if women had 45 percent or more of the jobs in that occupation in 1960, a year in which women were 32 percent of the labor force.

Recently, there has been a tendency to blame women's higher unemployment rates on the women themselves. It has been asserted (and the Council of Economic Advisers has taken this line) that a major factor in women's higher unemployment rates has been women's relatively higher rate of separation from jobs and their relatively greater tendency to be entering and reentering the labor force. The research I have done on this problem leads me to believe that this is a very red herring. Let me try to explain this simply. When one woman leaves a job, the number of unemployed women is not necessarily increased thereby. There is an opportunity for an unemployed woman to go into that vacated job slot. The act of leaving a job only increases the total number of people unemployed if the job slot is left vacant. Yet the data we have indicate that vacancy rates are very low—less than one percent, and that vacated jobs are usually filled very quickly. Lower separation rates for women might reduce the already small vacancy rate, but it could not be enough to make a significant dent on women's unemployment rates. Thus, a greater incidence of job leaving on the part of women probably can account for only a small part (perhaps 15 percent) of the difference in unemployment rates between men and women. As to those women entering the labor force, they do have to spend some time searching. But the unemployment attributable to their search time would be very low were it not for the fact that their search time is greatly prolonged because of the shortage of job slots for them. It is not their search for work that creates the major unemployment problem; it is the refusal of most employers to consider women for any job but a traditional "women's job."

Some analysts have argued that since women chronically have higher unemployment rates than men, and are an increasing fraction of the labor force, a given overall unemployment rate is less serious than it used to be. The implication many have drawn is that policies to fight unemployment can be relaxed. I believe the implication which should be drawn is precisely the opposite—the old weapons against unemployment need to be wielded as vigorously as before and additional new weapons to fight the extra unemployment caused by discrimination are needed. We have a situation where a relative undersupply of men and relative oversupply of women averages out to a high overall unemployment rate. The correct policy is not self-satisfied inaction but rather the enforcement of measures which encourage employers to relieve the scarcity of men by employing women in jobs for which they have previously not been considered. This would also help the fight against inflation.

Another line of argument which we continue to hear is that women's poor position in the labor market is not of too great concern, because the women of this country are being taken care of by the men. This is a line of argument which might be appropriate to Morocco or perhaps to the island of Skorpio, but it is not appropriate to the United States of America today. American women increasingly do not want to be merely the dependent of some man or other. Even if they wanted to, the rising divorce and separation rates in this country mean that an increasing number of women are forced to fend for themselves and for their children. Between 1960 and 1972, the number of households dependent on women increased from 9.5 million to 14.8 million; an increase of 56 percent. (See Table 1.) Those women with children who are in households without an adult male frequently find that going on welfare is the best alternative open to them, because of their poor labor market position. Thirty-nine percent of the people in households dependent on men are in poverty. (See Table 2.) Those women with husbands are only one man away from welfare status or an uncertain job at unfair wages. They are increasingly aware of it and an increasing number want good jobs right now. Those wives who work have the same right to a job with interest, with status, with a chance for advancement, with fair wages as men. A fair chance at whatever good jobs are open is now a legal right, a right which in the case of the vast majority of American working women is being violated.

We need a vigorous program to improve the economic position of women, or the present worsening trends in women's unemployment, wages and welfare dependency will continue and accelerate as more women enter the labor market. In my view, this program needs to be concentrated on two areas: ending discrimination in employment and improving arrangements for the financial support and physical care of children.

TABLE 1.—HOUSEHOLDS, BY TYPE, FOR THE UNITED STATES, MARCH 1972 AND 1960

Household	1972		1960		Percent increase, 1960 to 1972
	Number	Percent	Number	Percent	
Total.....	66,676	100.0	52,799	100.0	26.3
Primary families.....	53,163	79.7	44,905	85.0	18.4
Husband-wife.....	45,724	68.6	39,254	74.3	16.5
Other male head.....	1,331	2.0	1,228	2.3	8.4
Female head.....	6,108	9.2	4,422	8.4	38.1
Primary individuals.....	13,513	20.3	7,895	15.0	71.2
Male.....	4,839	7.3	2,716	5.1	78.2
Female.....	8,674	13.0	5,179	9.8	67.5

Source: U.S. Bureau of the Census, Current Population Reports, series P-20, No. 246, "Household and Family Characteristics: March 1972," U.S. Government Printing Office, Washington, D.C., 1973.

TABLE 2.—INCIDENCE OF POVERTY BY TYPES OF HOUSEHOLD AND RACE, 1971

	Total persons (thousands)	Persons in poverty	Percent in poverty
All races:			
In families.....	187,132	20,396	10.9
With male head.....	167,334	12,601	7.5
With female head.....	19,798	7,795	39.4
Unrelated individuals.....	15,721	5,163	32.8
Male.....	6,153	1,534	24.9
Female.....	9,569	3,604	37.7
White:			
In families.....	164,021	13,566	8.3
With male head.....	150,798	9,477	6.3
With female head.....	13,223	4,107	31.1
Unrelated individuals.....	13,676	4,214	30.8
Male.....	5,142	1,173	22.8
Female.....	8,534	3,040	35.6
Negro and other races:			
In families.....	20,996	6,839	32.6
With male head.....	14,616	3,143	21.5
With female head.....	6,350	3,696	58.2
Unrelated individuals.....	1,839	941	51.2
Male.....	878	373	42.5
Female.....	961	568	59.1

Source: U.S. Bureau of the Census, current population reports, series P-20, No. 233, "Household and Family Characteristics: March 1971," and P-60, No. 86, "Characteristics of the Low-Income Population, 1971," U.S. Government Printing Office, Washington, D.C. 1972.

With respect to ending employment discrimination and the sex-segregation of occupations which is its main expression, we have enacted most of the necessary laws; what is still missing is an effective strategy for implementation and also the will to enforce these laws. The Office of Federal Contract Compliance has the potentiality of taking strong action against government contractors who discriminate, but apparently has been inactive, almost moribund. The resources allocated to the Equal Employment Opportunity Commission have been extremely meager, when the magnitude of its assigned task and the importance of that task is considered. Ending discrimination against women and blacks, who together are 44 percent of the labor force, is at least as large and important a task as inspecting plant and animal health, or forecasting the weather or collecting tariffs on imports. Yet the federal agencies that do these latter tasks each employ 13,000

people, while the EEOC employs only 2,388. So a six-fold increase in the resources of the EEOC would not be out of line. In the past, virtually all of the meager resources of the Equal Employment Opportunity Commission have been devoted to dealing with individual complaints, many from relatively small firms. While this work must obviously continue, important new resources must be put into correcting noncompliance with the laws against discrimination on the part of the 500 or so largest corporations, not a single one of whom is in compliance with the law. The recent Bell Telephone case should point the way. The settlement of the Bell case covered thousands of workers and, perhaps even more importantly, had high visibility. I think that when employers come to believe that hiring women for what are currently "men's jobs" is respectable and fairly common, they will be glad to do so. I understand EEOC is moving in the direction of taking on the large companies. It must be provided with a greatly expanded staff to enable it to take on more than one corporation a year.

A necessary part of any successful anti-discrimination action is an affirmative action plan with numerical goals and timetables by occupation and grade. These numerical goals have been attacked as "quotas" which lead to the unfair exclusion of white male candidates. Let us make no mistake, these attacks on numerical goals come from those who want to keep things pretty much as they are. Those who attack "goals" as "quotas" want to maintain the current informal "quota" of 100 percent white males in certain jobs. The only substitute for numerical goals are vague statements of nondiscriminatory intent, and these tend to get us nowhere. Even where numerical goals are prescribed, success in desegregating occupations requires continuing strong pressure, as we have seen in the case of the Philadelphia-type plans where such pressure was apparently absent. Without numerical goals and without pressure to fulfill them, no progress at all is possible.

The problem of the care and financial support of children is also important to the economic well-being of millions of women. In families with no male present, the woman may have the double burden of caring for and financially supporting herself and the children. Under present arrangements, she may have to carry alone a burden which is hard enough in families with two adults, one of them a man who has a far more advantageous position in the labor market than she.

I think we have to move away from a system where (1) there is no mechanism which encourages a father to be regular in his support payments if the family is no longer intact and (2) the father is deemed to owe 100 percent of the children's support. Both things need changing: Both parents should be deemed to have an obligation to share in the support of children and official regulation of support payments owed by a parent who is not living with his or her children must be set up.

Women in single-adult households need adequate and assured payments for the father's share of support for their children as a matter of right, support payments which include money not only for the father's share of expenses for the children's food, clothing, shelter and medical care, but also for paid child care. I was shocked to read in a paper recently published by this Committee that only 19 percent of divorced fathers were in full compliance with court-ordered child support payments three years after the court order. However, on reflection, I decided that this was not really surprising. How many of us would be likely to keep up without interruption payments on the order of \$500 per month to an estranged spouse, given the almost complete absence of timely and effective sanctions? I would suggest that there is an answer to this particular problem, and I would urge the Congress to consider it: court-mandated child support payments should be administered by the Internal Revenue Service through payroll deductions, or by some like mechanism.

The problem of the father's share of child support in the case of illegitimate children or destitute fathers is obviously more difficult. I would hope that the government will foster increasing knowledge of contraception and easier access to abortion, and that these will reduce the number of illegitimacies. Where the father of a legitimate or illegitimate child cannot be found or cannot afford to be taxed for adequate payments, I believe the government should stand in for the father and donate the father's share of the payments as a matter of right.<sup>2</sup> (As indicated above, I do not think that a father's fair share of child

<sup>2</sup> The system I am advocating differs from AFDC in that: (1) it would provide for the part of child support owed by the missing parent, not 100 percent of the child's support, (2) it would not be income-conditioned, so it would not discourage work on the part of the remaining parent.

support payments is 100 percent, but it should be over 50 percent if the father has greater earning potential and/or if the wife takes charge of the children. If the children live with their father, the wife should make support payments.) The needs of non-employed adults should be supported not through child support payments, but through unemployment insurance or disability payments, and the like.

A better and more assured flow of child support payments will, through the medium of effective demand, help to bring into being more and improved facilities for day care for the children of working parents. For poor parents, day care should be subsidized.

The latest Economic Report of the President devoted an entire chapter to the economic problems of women, and the Council of Economic Advisers deserves great credit for doing this. The chapter was a thorough review of the economic problems of women. I would like to submit for the record detailed comments I and a colleague have made concerning this chapter. What was missing from the chapter and what needs to be done next by the Executive Branch of the Congress is the development of a policy agenda to relieve the economic problems of women. The two foci I have suggested are: (1) vigorous implementation of laws already on the books to end the discrimination in employment and promotion which keep women penned in a narrow, ill-paid, crowded part of the labor market and (2) the working out of a better system for support payments for children of single-parent homes. In the course of these hearings you will hear other worthy policy suggestions. But these two are, I believe, crucial.

Representative GRIFFITHS. Thank you very much.  
Mr. Samuelson, it is a pleasure to have you here.

#### STATEMENT OF PAUL A. SAMUELSON, PROFESSOR OF ECONOMICS, MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Mr. SAMUELSON. I am going to concentrate in my prepared remarks on the problems that I do know best, the economics of a modern mixed economy, its distribution of income, and how these are affected by present practices and procedures with respect to male and female employment. Others who specialize in the fields of social psychology, biology, political science, and education will speak, and also those who specialize on human power like Barbara Bergmann here, and have spoken to other issues.

Now, by reason of custom, law, discrimination, and motivations, women who are capable of holding jobs across the full spectrum of American economic life are in fact confined to a limited group of industries and occupations and positions and status within those industries. Even if a woman is not excluded from an industry, it may still be that she finds herself at the bottom of the heap in those industries. This is very well documented by all students of the subject. And it is very well known that these ghettos into which women tend to be restricted are not the executive suites at the top of the corporate enterprise, they are not the prestigious professions and the highest paid jobs generally. The typical woman worker is lucky if she earns 50 or 60 percent of the typical man worker, even though tests show that her IQ, diligence, and dexterity cannot account for the difference in pay status. And the differential remains around 20 percent even when we correct for the fact, as we should—that there is a difference in the length of time that a typical woman has been continuously in the labor force. This continuity is more of a relevant variable than it ought to be in the long run—that is, we should so readjust our society that, if women out of choice wish to go in and out of the labor market more than men do, for perfectly good reasons that we can all understand, then their previous expertise should not be wasted.

A man can transfer from one company to another without penalty, where there really is no transferability, whereas the woman who shows on her résumé that she has been out of the labor market awhile raising young children for a few years is very heavily penalized.

That is in the nature of the present pattern; it is part of the attitudes which have been built up and which perpetuate this situation.

In the absence of extensive census research, I offer you something which struck me a few years ago. The class at Radcliffe of 1937, which happens to be my wife's class, was more highly selected and gifted by every objective test than the class of 1937 at Harvard. You can check this by looking at IQ's, the number of honor awards, and grades. And yet I was appalled 25 years later when I came to study the income statistics of the reunion classes. These gifted and motivated women, even those who had never left the labor market by reason of marriage and motherhood or anything else, generally topped out at incomes just where the lucky males began their incomes.

A man is considered to be low paid often if he teaches in a primary or secondary school or is a librarian. If you look at the facts of the census, these are high-paid jobs for women. And yet all this was nobody's fault; it was just the way the system worked.

One of the greatest frontiers to improve U.S. productivity, U.S. GNP—and what is more important these days, our net economic welfare, the GNP corrected for the things which are not in it, disamenities of urban life, leisure and other things—is the present unused potential of women in our economy. If because of the dead hand of custom and discrimination half of our population have a quarter of their productive potential unrealized—and that may be an understatement—then by simple arithmetic a gain of between 10 and 15 percent in living standards is obtainable, by ending these limitations and discriminations. Maybe my arithmetic is oversimplified. And maybe it hasn't made sufficient allowance for their actual cost in the home. So subtract something from that number if you like. But also add something, because what we impute to women in the home and the status that they have in the home will be improved if their opportunity cost in industry is the higher figure that it ought to be.

So this may be a conservative, minimum estimate. And note that it is a permanent increment to our standard of life and well-being, not just a temporary dividend.

Well, a big question is: Will these economic gains to women come largely at the expense of male workers?

Will it structurally change the income differential between different occupations and skills? What are the repercussions on the family and the birth rate, quantitatively and qualitatively?

These aren't easy questions for anyone to answer. I certainly don't have firm answers to them. But there are so many unfounded assertions that go the rounds on these vital topics, implicitly and explicitly, that it is worth making an attempt to give approximate guesses on what research will some day give us as the justified answers.

First, it has to be said that by and large these gains that come to living standards and national income by additional productivity of a new group are not at the expense of the previous groups in society. No man's masculinity is really going to be threatened, and his paycheck is not going to be threatened. This kind of an effect that I am

speaking of has been demonstrated again and again by the history of U.S. immigration, by the long overdue upgrading of black Americans' economic opportunities, by the increasing education of all classes of American society. Each group produces more, it consumes more, it saves more. In other words, it carries its own weight.

Now, I haven't forgotten about the law of diminishing returns. And that law as it would apply to a largely agricultural economy of the Malthus type would say that there would be effects of subtraction on the wage and marginal productivity of the existing workers if you add a new group. But that is of a secondary and tertiary magnitude in an advanced economy like that of the United States or of Western Europe, in my judgment.

Second, it is only reasonable to suppose that just as the broadening of education lowers the differential returns of those who previously had a monopoly position at the top of the income pyramid, so will the gradual self-emancipation of society from sexual discrimination slightly reduce the degree of inequality of earnings.

For example, if as many women in the United States go into dentistry as in Finland, the quite high professional earnings of dentists might cease to be quite so high. I am not saying that nobody gets hurt. But I am taking broad categories and weighing the advantages and the disadvantages.

Certainly certain particular monopoly groups are benefited by the exclusion of women now. But that is the exception.

Third, an economic upgrading of women's status should in our materialistic society also rub off on general human status. Women will not be spiritually degraded by their economic advance, but on the contrary, will come into their long overdue social deserts. We have such a materialistic society where it is money that talks. Your status is automatically upgraded if your pay is upgraded.

Fourth, high-earning women, the statistics suggest, do tend to marry high-earning men. So the improvement in degree of inequality that comes from better opportunities for female heads of household breadwinners will be offset. There will still be need for concern about the disparity in the distribution of income. This is not a panacea.

Let me say, by the way, as a digression, that by and large our rules should involve symmetry. A person is a person. This would call for fair shares, equal treatment for women. But consider the fact, which somehow sadly is a fact, that women are given a special residual role with respect to children—they are the ones to whom the buck is passed in the last analysis. Then there is a strong case to be made for pushing toward more than fair shares. Now, there is no danger that we are going to hit equality and overshoot the mark. But when further progress is made, there will be room for still more.

Fifth, I think that better economic opportunity for women can be expected to accelerate the already strong trend toward smaller families and leveling off of population. That class of 1937 at Radcliffe—and I only use that as typical of its vintage—would have had many fewer children had job opportunities been more challenging and had social attitudes adjusted to this fact. Unless we are able to devise better programs for good care of infants and children of working women, the more affluent and more educated will be providing a smaller fraction of the generations to come.

I'm stating that not as a problem but as a probability.

Now, I am ready to expand on any of these themes, or try to answer any questions, and perhaps put something in the record.

But I realize that I have not said enough about what to do about this matter. And in my closing paragraph let me say that I don't think that the improvement will come about of itself. It must come about through pressure. It must come about through pressure of the citizenry on the Congress, it must come about through the pressure of Congress and the Executive on business and on unions and on all of us.

It must come about through coercion.

There are great similarities between the problem of discrimination against women and the problem of discrimination against other groups. And there is beginning at last to be in the data on the earnings opportunities of black Americans, as against white Americans, something seems to be in the data since 1965 for the first time that shows a ray of hope which is more than just an upswing in a war economy or an upswing in a boom economy, something that seems to require a dummy variable. And I suggest that that dummy variable that is in those regression equations has to be the continuous pressure of Government. You cannot change attitude by laws alone. But it is amazing how ephemeral attitudes are when laws make you change them.

Try not discriminating, and you may find you will like it.

I was at Clintonville, Va., visiting a Dupont plant on the day that by force of the fact that Government contracts would be refused to Dupont, the word went out and was implemented that black workers no longer had to just sweep the floor. Personnel officers called in these small town southern workers, and these personnel officers in their southern dialects said, "Now, look here, we don't like this any better than you do. But these are your jobs, we just won't have work for you unless you change your attitudes. And we want you to know that head management in Wilmington is behind this."

You have got to put the fear of God not just down the line, but up the line, too.

[The following paper was attached to Mr. Samuelson's statement:]

#### ECONOMICS OF SEX: A DISCUSSION<sup>1</sup>

(By Paul A. Samuelson, professor of economics, Massachusetts Institute of Technology)

Women with jobs receive much lower pay than do men with the same education, general mental aptitudes (I.Q. etc.), and years of work experience. This common sense observation is documented by the papers of Professors F. Weisskoff and H. Zellner, who each show that women tend to be segregated in lower-paying occupations. Indeed, my colleague Robert Hall has shown in the Brookings Papers on Economic Activity (1970, 369-410), that the only group in our economy who continue to get higher earnings beyond the middle-twenties ages are white men: i.e., black men and all women have essentially no gains in pay or status to look forward to with age.

One cannot help agreeing with Professor Zellner and Weisskoff that the pattern of female segregation does not represent a rational equilibrium based on intrinsic inferiority of females as factors of production. Instead it must for a large part represent a process of discrimination against women, unconscious and conscious. Like discrimination against blacks, Jews, homosexuals, immigrants, and radicals, sex discrimination often has in it a self-fulfilling vicious circle: women become less self-assured, less possessed of crucial experience under the self-

<sup>1</sup> Paper presented at the American Economic Association meeting, New Orleans, La., Dec. 28, 1971.

perpetuating regime; those males (and females) who begin without sex prejudice become contaminated by it; and those who themselves think they do not have it feel they must in their self-interest engage in discrimination "to please" their customers, or employees, or boss, or banker, or . . .

If segregation stems even in part from discrimination based on prejudice and on misinformation—and note we do not have to wait upon future research to isolate these from some possible genetic and permanent-cultural superiorities of either sex over the other—then society has much to gain from reducing sex discriminations. Women themselves, and their families, have no doubt the most to gain from such a change; and men, as a group, no doubt have something to lose from removal of their privileged status; but, on the whole, in a specifiable sense, the totality of society stands to gain—in the sense that there will be enough increase in total product to make everybody potentially (i.e. through feasible Pareto-optimal side payments) better off.

Since the papers have just come to me, and since the subject is so interesting and important as to require no sprightly badinage, I propose to use my few minutes of scarce time to explore the simplest model of sex discrimination that I could think of. Here it is.

1. We have an equal number of women and men workers, really alike in all productive traits, and with zero algebraic emotional problems in working with each other in any indifferent combinations.

2. We have three, identical, independent occupations, each having declining marginal-productivity demand curves for labor (expressed in money of constant purchasing power, and with "consumer-surplus triangular areas above their rectangular-area wage bills" that represent competitive rents to the fixed hiring factors).

3. Women are arbitrarily segregated to work only in occupation 1; men can work in 1, 2, or 3.

*Warning.*—There are genuine asymmetries in real life between men and women that escape the model. Thus, if women desire to take maternity and post-maternity leaves in a degree that men will not, we face the old problem: How can one treat unequals equally? Recall Shaw's ammendation to the golden-rule dictum of treating your neighbor as you would have her treat you. Shaw asserted: "Don't treat your neighbor as you would be treated. He—I mean she—may be different."

*Query.*—

- A. What are the costs to women of discrimination?
- B. What are the gains to men of discrimination?
- C. What are the effects on total wages of discrimination?
- D. What are the effects on total competitive profits?
- E. What are the effects on total welfare or total real incomes of discrimination?

I give definite answers to all these questions, under the special assumption of linear demands. I have not yet investigated<sup>2</sup> how much my conclusions depend on strict linearity (but it is obvious from classical investigations of "small taxes" that, as discrimination becomes incipiently small, some of this linear analysis becomes increasingly exact.)

Three of my answers are obvious, corroborating common-sense expectations that sex discrimination hurts women workers, helps men workers, and hurts total real product. What is not so obvious—at least, to me, it came as a surprise—it turns out in this model that sex discrimination (in either direction) helps the residual profits or competitive rents of the hiring factors (which presumably, because of past sex discriminations, are predominantly owned by men).

Figure 1 tells the story. The line ABC represents the demand for Industry 1. The line ZYX represents the horizontally-aggregated demands of Industries 2 and 3; because the workers are allocating themselves half to each industry, this line falls more gently than ABC, having half its slope; and since the employment in these industries grows as people are shifted away from Industry 1, ZYX falls

<sup>2</sup> Since giving this orally, I have ascertained that, for non-linear demands, it is not assured that non-discrimination minimizes total profits and maximizes total wages. Thus, let the demand curve follow AB as in the figure, but below B break almost horizontally: then the discrimination will lower the profit total; and it will raise the wage total but, since total welfare still must fall, the wage rise will be less than the profit drop. Even without a corner at B, as when the demand curve through B is very convex (from below), this same phenomenon will be observable. The fact that total wages can have a local minimum and profits a local maximum at zero discrimination shows that linear analysis is not always applicable even for incipiently-small discrimination—despite my oral optimism.

from right to left. The horizontal line FOM represents total labor, female plus male; moving right from F to O, female labor increases; and, moving left from M to O, male labor increases.

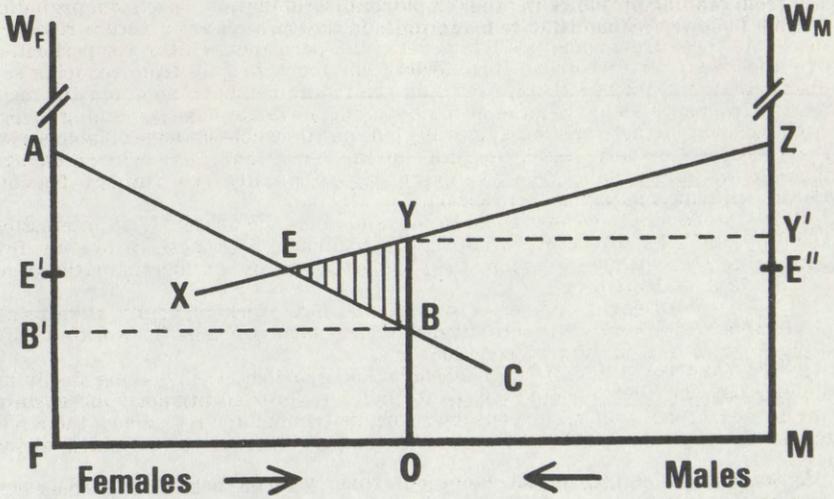


FIGURE 1

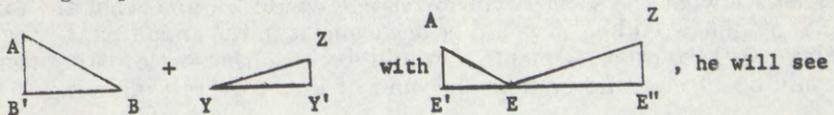
ACT I

Under complete segregation of women out of Industries 2 and 3, all women go to Industry 1 and end at the low wage shown at B. No man can afford to go to Industry 1 at so low a wage; hence, all men go to Industries 2 and 3, necessarily equally if they pursue most advantageous wage, and all men end up at the high wage at Y. The wage differential, BY, results from discrimination.

The reader may verify the respective wage bills: FOBB' for women and OMY'Y for men; the profit triangles B'BA in Industry 1 and only YY'Z in both other industries! The total of social welfare, measured in real output (or dollars of constant purchasing power or, if consumers of both sexes owned land equally and were hedonistically commensurate, in some kind of cardinal utility units) is given by AFOB + YOMZ.

ACT II

Now we remove all segregation, which by hypothesis is completely irrational in our model. The new wage equilibrium for everybody is at E as either (1) one-third of the females "invade" Industries 2 and 3 in equal proportions, bringing down the wage rates there and raising it in Industry 1 to equality, or (2) at random, we indifferently allocate the work force, FM, to get equal totals in all industries at the common wage. The triangle formed by EBY measures the gain in "social utility" from abolishing discrimination, non-inclusive of psychic and ethical advantages of enjoying equity. Notice: E stands for "equilibrium," "equality," "efficiency" and "equity"—they are equivalent in this model. Note too that, with linearity, E is one-third way eastward in longitude from F to M, and it lies north of B by two-thirds of the latitude toward Y. Therefore, if the reader will draw the horizontal line E'E'', he will find that the total wage bill under discrimination is less than under freedom. But if he compares the sum of this discrimination-regime profit triangles



that employers get more competitive profits under discrimination than they do under equality of treatment. [*Query.*—Does unconscious realization of this influence and reinforce prejudice, particularly on the part of those employers who deign to reap the extra profits of hiring low-cost women? Such canny types can gain from fanning prejudice in other employers.]

Table 1 shows the quantitative magnitudes in the linear case.

TABLE 1

	With no discrimination	With discrimination
Female labor .....	1	1
Male labor .....	1	1
Female wages .....	100	$100 - \frac{2\Pi}{4}$
Male wages .....	100	$100 + \frac{\Pi}{4}$
Total wages .....	200	$200 - \frac{\Pi}{4}$
Total profit .....	$\Pi$	$\frac{W + \Pi}{8}$
Total welfare .....	$200 + \Pi$	$(200 + \Pi) - \frac{\Pi}{8}$

As a final postscript, let me point out that imperfections of competition—in the sense of conditions of Chamberlin-Robinson-Knight monopolistic competition, for reasons of increasing returns and other factors unrelated to sex discriminations—are almost a necessary condition for the observed patterns of segregation. By this I mean the following:

If constant returns to scale prevailed perfectly without artificial barriers to entry, if knowledge were complete, if women are actually or potentially the equivalent of men as factors, both productively and in terms of affect, then the condition shown in E would tend to be approximated in the real world. Proof: in the Wicksell fashion, women could hire land and plant and men and women to produce this ideal regardless of sex-bigotry on the part of much of the population. (Also, with competitive profits higher in the ghetto area, fixed factors would be attracted there, resulting, as in the famous factor-price equalization theorem, in a tendency toward equalization of wage rates: if Martha is forbidden to go to the mountain, the market can come to her.)

Alas, I conclude from this not that sex segregation and discrimination will soon improve. But rather that the real world departs significantly from the posited perfect-competition model.

Representative GRIFFITHS. Thank you very much, Mr. Samuelson. I couldn't agree with you more.

The truth is that today's laws changed yesterday's attitudes and the way to change attitude is by law, compelling that difference.

I would like to ask you, supposing that we really did enforce equal pay for equal work, we actually give women beneficiaries the same amount under social security that we now give men, that we quit discriminating in the tax structure against women—and it is a sex discrimination, singles pay 16 to 20 percent more than married, and that really is, I am sure, a sex discrimination, because there are more single women—supposing all of these things are done in one year. What would you assume would be the inflationary or deflationary effect? Could the economy stand it?

Mr. SAMUELSON. I think, if I were to take out a pencil and begin to calculate what the social security change would be, and what the tax take change would be, it would be one element in the annals of the year along with 20 other elements. I would say it is the sort of thing that could be offset, could be taken account of in the overall planning.

And I always try to remind myself that the future is longer than the present. The discomfort in the transition would be a minor thing.

Representative GRIFFITHS. I would like to comment also that the truth is that many of the discriminations against women have been welded into union negotiated contracts, and that when finally those were broken as they were in the telephone cases, men quit seeking to sweep the floors and decided to be long-distance operators. It changed the way in which people work. It turned out that the men really were working for money. And obviously this is what the women would like. But will it create additional competition in women's jobs that would be alarming to women? Do you think so, Mrs. Bergmann?

Mrs. BERGMANN. I don't think it would be alarming to women. I think it would be a great improvement if we got over the sex-typing of occupations. I think, for example, that in the health field there are many men who would probably have gone into nursing, and would be better off if they could have gone into nursing than they are in their present jobs. Such men might do well in nursing, but they are kept out of it because of the stigma that it is a woman's occupation. But at the same time many of the women who have been forced into nursing because they have been refused admission to medical schools, or because they have been told that it is improper for them to be physicians or dentists, would also be better off.

I might put in a word on the inflation question that you asked Mr. Samuelson about. I think one of the reasons that we may tend to get inflation at a relatively high unemployment rate is that certain kinds of jobs are restricted essentially to white males. And when demand rises for that kind of worker and you run out of white males, that causes pressure on their wages, and that puts pressure on the whole wage structure. If we could get rid of some of these restrictions which prevent the recruitment to jobs of women and blacks, I think we could get a better hold on the inflation problem.

Representative GRIFFITHS. Mrs. Bergmann, Mr. Stein quoted from a Labor Department-sponsored survey analysis by Jacob Mincer and Solomon Polachek, showing that experience does indeed matter for women and that the continuity as well as the number of years of experience have important effects on women's earnings. Women who never marry have lifetime work histories closer to those of men's and this is the main reason why the hourly earnings of white single women as observed in the NLS sample were 86 percent of the earnings of white married males.

Are you familiar with the study?

Mrs. BERGMANN. Yes.

Representative GRIFFITHS. How valid are the conclusions reached by the authors?

Mrs. BERGMANN. I have great respect for Professor Mincer. I was on the phone with him last night, as a matter of fact, being forewarned. And we discussed the fact that in that study the information on men comes from one survey and the information on women comes from another. Now, I think it is fair to say that the imponderables in doing this sort of thing are fairly high. Each survey has its own characteristics, its own way of asking questions, its own biases, if you will. There are some earlier data on this issue, which tend to indicate that the difference between unmarried women and men or married men

is somewhat greater; instead of the ratio of men's pay to women's pay being, say 1.16, it is more like 1.25. So I would not take the Mincer-Polachek study as final.

I may say that the Council's own estimate of the extent of differences in wages due to discrimination is very low, as compared with the results of much of the research which has been done. A recent article reviewed seven studies which have been done on this issue, and six of them show the difference in wages of men and women due to discrimination as between 20 and 40 percent.

Representative GRIFFITHS. Thank you.

Mr. Widnall.

Representative WIDNALL. Thank you, Mrs. Griffiths.

Mrs. Bergmann and Mr. Samuelson, I have enjoyed listening to your testimony, and I think we are rather fortunate in having you both here as witnesses today, because you have been experts in the field for a long time.

May I address my remarks to you for a minute, Mr. Samuelson?

If you have any concern for the lame, the halt, the blind, and the discriminated against, please put your statement on something I can read.

Mr. SAMUELSON. I stand corrected.

Representative WIDNALL. I read it with great interest and listened to what you had to say.

Mr. Samuelson, you infer in your statement and in your chapter on discrimination in the new edition of your textbook that the economic problems of women are due to "confinement to a limited group of industries and occupations within those industries."

Could you explain what other factors you theorize to be significant in creating the female-male differential in that field?

Mr. SAMUELSON. We have learned about some of the detailed studies that are made to break down the different factors that explain an obviously large differential. It seems to me that these studies are excellent, the studies done by the Council of Economic Advisers, in comparison with earlier councils. It seems to me we need more of them. But they must not have a soporific effect upon us, because, as in the case of all discrimination, there is a self-fulfilling and a self-perpetuating circle involved in discrimination. Women have less experience than men, and therefore you explain away the differential. But you have to ask yourself. "Why is the world run in such a way that the women gets less experience for the good jobs?" A white male apparently is what all of Darwinian evolution has set out to create. Out of the slime came DNA, and then a backbone or something of a backbone was created, and then humans came down from the trees, and all this to create a white male. For, by census analysis of my colleague, Prof. Robert Hall, the only group who get automatic advances with age in the community, let's say, after the age of 25, 27, 29, are white males. Women don't get it, whether they are white or black. Black men don't get it.

There is little good reason for a woman to have continuity in the labor force. She is given a rotten job by and large; then she leaves; and when she comes back, she again gets a rotten job. For a man, it is usually different. Only this last recession was a recession which hit MIT graduates and other professionals. As my suburban neighbors

said while they were polishing their cars, why it's people like us who have been thrown out of work. For a long time prior to that, all they had done was go through the coffee breaks and funeral by funeral move up the promotion and salary ladder. Now, that does not happen to the rest of the community. That is why, when I do an analysis of wage variance, or when Professor Mincer does it, we pick up these same facts of discrimination once again, yes, women lack capital. The curse of the poor is their poverty. They lack human capital. Human capital is the ability to earn a large amount of money. And if you haven't got it, you don't earn a large amount of money. These are all attitude conditioned.

Let me give an example. It used to be said—I don't know what the full truth was—that Jews had a bad occupational outlook in engineering. There was said to be great discrimination against them. There were very few Jews in engineering. And it was said, they are really not fitted for it. They don't like work for pay, they like to be their own boss, probably lending money at high interest rates, and other such nonsense. And then a great change came. After World War II, in contrast to after World War I, go out to Route 128, or to Pasadena or the bay area, or Seattle, and you find that suddenly these people who previously had no human capital in that engineering-science line, no wish for it, no proclivity, no talent, they turned out to be, I would say, well represented in any random sample.

Attitude becomes self-reinforcing, and the statistics then prove for you what you already know, if you understand the attitudes involved.

So we are only talking about the visible peak of the iceberg of custom and discrimination. There have to be great changes. A 1-year change in legislation of course is only the beginning of a very long process.

You asked Barbara Bergmann whether women would be threatened if men who were previously not available for some of their work were made eligible. Well, if the program is administered by personnel directors who say that everybody is eligible, women can do men's work and men can do women's work, but in fact it is the men who have been previously kept out of nursing who are allowed in, then of course, it will hurt women.

This is like an explanation given to me by a Belgian in 1950, who told me that the Congo colonialism is going to last 100 years. There was perfect freedom there, according to him: The whites at night have to be in their part of the town, and the blacks at night have to be in their part of the town. Thus, legislation and how it is implemented is all important. So I have only scratched the surface of the reasons for these very deep-seated changes, which can be made.

Representative WIDNALL. Mr. Samuelson and Mrs. Bergmann, you might be interested, my daughter-in-law and son both graduated from MIT. They both have their doctorates in aeronautical engineering. My daughter-in-law teaches graduate engineering in MIT, and my son is part of a consulting firm now in aerodynamics.

When he was just still going through college, he had two summer jobs teaching sailing, which he thoroughly enjoyed, and he netted \$750, because he would live like a bum the whole summer, with just one clean pair of pants and no shirts. And I said, "you had better find out whether you like engineering and want to become an engineer."

So he got a job the following summer. And he told me at the end of July, "I don't think I want to become an engineer." And I said, "Why?"

He said, "All they do is they have a yellow pad in front of them all day from Monday through Friday, and they write on the yellow pad. Friday night they take the yellow pad home. And Saturday and Sunday they look at the yellow pad and write figures. And then they come back again on Monday." He said, "I don't think I want to be an engineer."

So I suggested to him that there are other things beside writing on a yellow pad that come with an engineering education, and that the benefit of that education taught discipline of the mind and the ability to make decisions and other things that are extremely valuable later on in life. Whether I had anything to do with it or not, he decided that he would stay in engineering. But it has been very interesting to see the development of thought.

And my daughter-in-law has been changing curriculum up there at MIT and has had a very important function in that respect.

Incidentally, she is a very keen women's libber, and I get into all kinds of discussions with her.

But I would like to make this comment out of personal experience. We have a shortage of nurses, and we have tried hard to develop more in the nursing profession. And I think some advance has been made. But my observation through the years is that some of these who go into the nursing profession never really want to practice nursing. They decide they all want to be supervisors. And so you are left with the candy-strippers and volunteers and nurses' aides doing most of the nursing in the average day. And I wonder if this is not happening throughout our society with the desire of people to be a chief rather than an Indian, and whether we are going to end up with a nation of chiefs and no Indians, and not have the ability to get some things done that badly need to be done within our economy.

Mrs. Bergmann, you are restless.

Mrs. BERGMANN. I would like to address myself to that.

I think one of the problems in our society is that the pay differentials between the chiefs and the Indians are very great, and the status differentials between the chiefs and the Indians are very great. So naturally everybody who can possibly sneak up into the chiefs group does so, even people who might be happier being Indians and more fulfilled that way.

I think one of the effects of reducing discrimination against blacks and against women is that the stigma will be taken off certain occupations. And when nursing is a two-sex occupation instead of a one-sex occupation, when there are more white janitors than there are now, when garbage collecting, for example, is a very highly paid occupation because of the smell, instead of a very low-paid occupation—when people go to it because they like outdoor work, and because there is no stigma attached to it, we will have a better society, and we will have a society which is better served by the labor force. And

a very important part of working toward this end is the reduction of discrimination, and an end to viewing groups, whether blacks or women, as inferiors. This will have a very important part in the way our lives are run and the happiness we have in our jobs, and in the products and services which are delivered.

Mr. SAMUELSON. May I speak to your specific questions, Mr. Widnall?

Representative WIDNALL. Yes, sir.

Mr. SAMUELSON. I know one of the few women in the country who is a professor of production. She was trained at MIT and the Harvard Business School. It wasn't true that she then had no job opportunities. She was offered a job in the Greater Boston area at about half the going rate. But the University of New Hampshire, being perhaps a liberated institution, offered her a proper job, and she is a professor there. And she happens, among other things, to be a specialist in nursing, or professor of production. She once mentioned to me that nursing is a profession where there is little improvement in pay and status with seniority. The only way to get an increase in pay, to become like the white males that I was speaking of, is to levitate downward into administration. You become a registered nurse, let's say, at the age of 25, and you are going to leave the labor market at 68. If you happen to like nursing, if you happen to be interested in alleviating human suffering, you can look forward to no status improvement at all. I do not think it is malingering. That alone explains why people don't want to do an honest day's work as they used to in the days of Henry Ford's Village Green days. Today we all work less hard, and those white males work less hard, too. But there is a difference in the reward in money and in status that is involved in some of their occupations. And we have to look at patterns and customs of discrimination to see whether they explain the effects.

Representative WIDNALL. I would just like to leave with this comment, that within the last year my daughter-in-law received an award down in Washington at a Science and Astronautics Society dinner. The award she received was Man of the Year. And I think this is the first time it has every been awarded to a woman.

Representative GRIFFITHS. I would like to ask Mrs. Bergmann, before you leave, in your opinion to what extent do the official statistics underestimate the amount of unemployment among women?

Mrs. BERGMANN. Well, of course one has to start by saying how one defines unemployment. There are people who are discouraged by their fruitless job search who say when asked that they are not looking for work. Therefore they are not counted as unemployed. But if a job were open they would want one. The extent of unreported unemployment in this sense is certainly greater among women than among men.

If you would like, I will make a better estimate than I could give to you at this time and send it to you.

Representative GRIFFITHS. I would like to have it.

[The following information was subsequently supplied for the record:]

"HIDDEN" UNEMPLOYMENT AMONG WOMEN<sup>1</sup>

(By Barbara R. Bergmann, University of Maryland, College Park, Md.)

In the first quarter of 1973, the women's unemployment rate was shown by the Bureau of Labor Statistics figures as 24 percent higher than the men's unemployment rate. Even though these figures seem to show that women have considerably higher unemployment rates than men, the official BLS method of tabulating unemployment tends to underestimate somewhat the relatively greater unemployment problem of women. The facts on women's unemployment are even worse than the 24 percent difference in the official report.

In that first quarter, BLS found that 241 thousand men and 400 thousand women were not looking for jobs even though they still wanted work, because they had become convinced that no job was available. In accordance with standard BLS procedure these people had been classified as not in the labor force rather than as unemployed even though they wanted work. When an adjustment is made to the published unemployment rate to include these discouraged would-be workers as unemployed rather than as not in the labor force, the women's unemployment rate comes out to be 35 percent higher than the men's rate, rather than 24 percent as implied by the official definition of unemployment. The details of the computation are shown in the accompanying table.

Even after this adjustment is made to the unemployment rates, there is still probably a considerable understatement of women's unemployment problems because of the attitudes of both men and women concerning roles appropriate to them. When a woman who wants to work outside the home can't find work she may find it psychologically easier to tell the survey taker that she is taking care of her home than that she has been unsuccessful in her search for work. This is socially unacceptable for a man. Furthermore, the shortage of jobs with decent pay open to women means that many women who might desire work take the option of welfare dependency, and are not counted as unemployed. The result is that many women are probably classified as out of the labor force when under a broader definition they might be classified as unemployed. How many are misclassified is unclear under present reporting practices.

It would be very useful if the Bureau of Labor Statistics could, on an experimental basis, make some additions to the questionnaire they use to try to bring out more details of the labor market situation of both men and women. Other countries, such as Sweden, have made such efforts in more detailed reporting. I believe that more detailed questionnaires would reveal that the shortage of jobs for women in this country is much greater than is currently credited.

The foregoing is not intended as criticism of past or present practices of the Bureau of Labor Statistics. The Bureau has a very difficult task, which it has performed with skill and care. The professional people of the Bureau undoubtedly are more aware than anyone of the desirability of further experimentation to push forward our knowledge of the labor market.

UNEMPLOYMENT RATES ADJUSTED FOR DISCOURAGED WORKERS<sup>1</sup> BY SEX

[1st quarter, 1973]

	Men	Women
Unemployed (thousands).....	2,615	2,062
Labor force (thousands).....	52,962	33,614
Unemployment rate (percent).....	4.94	6.13
Ratio of women's to men's unemployment rate.....		1.24
Discouraged workers <sup>1</sup> (thousands).....	241	400
Unemployment plus discouraged workers (thousands).....	2,856	2,462
Labor force plus discouraged workers (thousands).....	53,203	34,014
Unemployment rate adjusted to include discouraged workers.....	5.37	7.24
Ratio of adjusted women's to men's unemployment rate.....		1.35

<sup>1</sup> Not in the labor force because they think they cannot get a job.

Source: U.S. Department of Labor, Employment and Earnings, April 1973.

<sup>1</sup> In preparing this note I was aided materially by conversations with Nancy Barrett of American University and Alfred Tella of Georgetown University. However, neither is in any way responsible for the contents.

Representative GRIFFITHS. I notice that you suggested that there be payroll deductions for court-mandated child care. You might be interested to know that I tried some time ago, and was successful in the House, in inserting in a bill a requirement that would make the pay of the military subject to levy by a wife. Of course, the pay of no Federal employee is subject to attachment. And it seems to me that the Federal Government could begin in a real simple way by taking child-support payments from the pay they are giving to their own employees. We might try that out for a while and see how it works.

Thank you very much.

This committee will recess, to meet in this room at 9:30 in the morning.

[Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 9:30 a.m., Wednesday, July 11, 1973.]

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text, appearing as several lines of a paragraph.

Third block of faint, illegible text, continuing the document's content.

Fourth block of faint, illegible text, showing further details of the document.

Fifth block of faint, illegible text at the bottom of the page, possibly a conclusion or footer.

# ECONOMIC PROBLEMS OF WOMEN

---

WEDNESDAY, JULY 11, 1973

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10 a.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths and Senator Javits.

Also present: Lucy A. Falcone, Sharon S. Galm, and Courtenay M. Slater, professional staff members; Michael J. Runde, administrative assistant; George D. Krumbhaar, Jr., minority counsel; and Walter B. Laessig, minority counsel.

## OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. The Joint Economic Committee continues today its investigation into economic problems of women. Evidence was presented to us yesterday showing that the position of women vis-a-vis men has deteriorated rather than improved in the last decade. Women's earnings are now on the average 57 percent of men's earnings, while 15 years ago women earned 64 percent of men's earnings. In the last 20 years, women have not succeeded in changing the occupational distribution by sex. Women are still concentrated in clerical and service occupations and are underrepresented in the professions, and among managers and highly skilled workers.

This stagnation or deterioration in the economic position of women has occurred in spite of major legislative and executive initiatives implemented in the last decade—the Civil Rights Act of 1964, specifically title VII which created the Equal Employment Opportunity Commission, the Equal Pay Act of 1963, Executive Orders 11246 and 11375 and job training programs. The enforcement of these laws and orders has been sporadic at best.

The Equal Employment Opportunity Commission was greatly hampered from 1964 to 1972 because it had no power to bring suits against companies in violation of the Civil Rights Act. The Commission has only recently begun to take advantage of the expanded powers that Congress legislated last year. The backlog of complaints at the EEOC suggests administrative problems, a shortage of competent staff, or both. Some complaints are not processed for as long as 1 year or 2 after they are filed, and I have heard that in some regional offices complaints aren't even acknowledged for 1 year. Given such a protracted and frustrating complaint process, many women may even be discouraged from filing against their employers. Some of the ques-

tions we will touch on today include whether or not the EEOC needs additional powers to enforce title VII, what administrative problems hamper its operation, and the degree to which the Commission must depend on support of the administration in office to vigorously enforce antidiscrimination laws.

The Equal Pay Act has stronger enforcement powers. Over 130,000 workers have been found to be due backpay in the last 8 years. It is noteworthy that most violations of the Equal Pay Act are discovered in routine Labor Department investigations and are not the result of complaints.

The two major shortcomings of the Equal Pay Act have been first, lack of coverage of certain occupations—this was remedied to some degree last year by inclusion of administrative, executive, professional employees, and sales people. However, several groups are still excluded from coverage—State and local government employees, small retail and service organization employees, and agricultural workers.

A second problem area is the criteria used to determine whether men and women perform the same jobs. For example, the act allows comparison only of work performed in the same establishment so that workers in the same company may not be compared if they are located in several different plants.

The third major antidiscrimination tool available to the Federal Government is Executive Order 11246, as amended. Given the increasing dominance of the Federal Government in the economy, the Executive order should be a powerful instrument. This year, the Federal Government will procure goods and services worth \$53 billion. How many of these contracts does the Government review for racial and sexual discrimination? How many contracts has the Federal Government terminated because a company practiced racial or sex discrimination? How many educational institutions have ever had funds delayed or denied because of discrimination? How often has the Office of Federal Contract Compliance put pressure on other Government agencies to comply with the Executive order? The Defense Department, the largest single procurement agency, will purchase approximately \$25 billion worth of goods and services in fiscal year 1974. How many times has the Defense Department delayed approval or terminated a contract for noncompliance with the Executive order? These are some of the questions I expect to raise with our witnesses today.

We have a lot of ground to cover, Mr. Brown, so we will proceed. When Mr. De Lury comes we will ask him to join you.

And will you confine your remarks to a résumé of your statement. Your full prepared statement will appear in the record.

#### **STATEMENT OF HON. WILLIAM H. BROWN III, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Mr. BROWN. Very well, Mrs. Griffiths.

First I think I should point out to the committee that we indeed at the Equal Employment Opportunity Commission are quite concerned about the problems of discrimination of sex. We have been ever since the inception of the Act back in 1964, and since the inception of our Commission in 1965.

Since that time we have received literally thousands and thousands of complaints. As a matter of fact, presently in the past fiscal year 1973 we have received some 40,000 individual new charges coming into the Commission. We are anticipating receiving in the current fiscal year some 50,000 to 55,000 charges. Approximately 25 percent of all the complaints which have been filed with our Commission have been filed on the basis of discrimination because of sex.

And that percentage has held fairly constant ever since the second or third year of our operation.

I think I should also point out to the committee that the requested funds for the Commission have been substantially increased since my becoming chairman back in 1969. Last year funding was at a level of \$32 million, and approximately 1,900 plus employees. In the current fiscal year the President has requested some \$47 million for our Commission, and 2,388 employees. We have already received from the House, appropriations of \$40 million, which represents an \$8 million increase over where we were last year.

I think I should point out that the most important thing which happened within the past year and a half is, of course, giving to the Commission enforcement powers. These powers were lacking in the past, and because of the lack of enforcement powers we were unable to bring about the kind of results that we had hoped to achieve.

Since the issuance of the amendments in 1972, we have filed some 122 complaints. And of that number approximately 67 contain allegations of discrimination because of sex. These complaints have been filed against major employers, and minor employers—minor in the sense of size—and against unions, addressing themselves to the problems that confront the Commission and indeed confront our country as we look at the problems of discrimination.

We have to date already settled two cases. And I might just touch on those two cases.

The first case was a case of discrimination against the General Motors Corp., the Fisher Body Division in St. Louis. In that particular case a consent decree was entered which was specifically aimed at the certain employment practices in that plant which discriminated against women in hiring and in promotions. Under the terms of the decree General Motors will implement certain affirmative recruitment and job promotion plans working toward a goal of 20 percent women among their hourly employees in assembly line jobs. They have also agreed to implement specific steps in recruiting, in hiring, in promotions and other terms and conditions of employment at the St. Louis plant which will be consistent with the requirements of title VII.

In a separate action, an action against National Can Corp., we obtained a settlement agreement which eliminates any sex discrimination policies alleged to have been practiced by that company at its California operations.

The agreement also provides for \$21,000 in back pay to some 95 affected class members.

I believe the most significant achievement of the Commission to date, and indeed perhaps the most significant achievement as far as civil rights is concerned in the employment area, was the settlement which we worked out with the A.T. & T. Corp. As you know, that corporation employs some 750,000 employees. Approximately 50

percent, or 51 percent of the persons so employed are women. This corporation employs more people than any other corporation in this country save the Federal Government itself, which employs some 555,000 female persons.

We found that in our review of the A.T. & T., while women compose 99.8 percent of the system's secretaries, and 99.9 percent of the operators, and 98.9 percent of the service representatives, they only comprise 1.1 percent of the craft workers, and 1.6 percent of the operatives. And while 41.1 percent of the company managers were women, 94 percent of them were in the first level of management, while less than 50 percent of male managers were at the same level.

This agreement was signed on January 18 of this year. The settlement itself is significant, not only in terms of the amount, which is very, very significant—and I would indicate that the back pay alone amounts to some \$15 million, which goes to compensate some 13,000 women for the discriminatory practices that the Commission found. In addition to that, under the agreement we originally had estimated that there would be some \$25 million of pay to bring the women's salaries up to where their male counterparts' salaries were at the time. That figure is very, very low, because the current estimates run as high as \$35 to \$58 million per year for the next 4 or 5 years.

In addition, the company agreed to develop goals for increasing the utilization of women and minorities in each job classification in all of their 700 establishments within the Bell system.

There also was a very unusual provision in the agreement which called for the setting of goals for employment of males in previously all female job categories.

And I think finally the companies will take the necessary steps to assure that their transfers and promotion procedures are in accordance with the Equal Pay Act and the Civil Rights Act of 1964.

With the impact of this type of case, the publicity which has attended the signing of the agreement, and the subsequent publicity is going to go a long way, I believe, to eliminate the problems of discrimination in employment, particularly as it relates to women throughout the country.

Many of the major employers are presently starting to take another hard look at what they have been doing.

The other major achievement, I think, in terms of the Commission, is that we have established already some five litigating centers. These are located in Atlanta, Philadelphia, Chicago, Denver, and San Francisco. They have been staffed with some 27 attorneys per office, along with other 25 to 30 clerical support and also paraprofessional support.

I think that our sex guidelines which were issued a little over a year ago once again set forth what we believe to be the proper standard, and indeed narrow almost to the vanishing point what we feel have been the discriminatory practices against women as far as maternity leave is concerned, and as far as what we call the BFOQ, the Bona Fide Occupational Qualifications exemption. It is the feeling of the Commission that the only proper exemptions under the BFOQ would be in those cases where you need it to have authenticity for example, the case of a person being an actor or actress, models, those certainly could be hired either on the basis of being male or female.

I think we have also been very fortunate in having the Supreme Court make a number of decisions which have also gone a long way toward eliminating discrimination because of sex. In *Phillips v. Martin Marietta Corp.*, the Supreme Court unanimously held that the law forbids one hiring policy for women and another for men when both are parents of preschool age children.

In the *Rosenfield v. Southern Pacific Co.* case, the Court in that particular case adopted the Commission's guidelines on discrimination because of sex, and stated that a woman must be allowed the same opportunities as a man to demonstrate her physical ability to perform a job, and must not be denied a job on the basis of some sex stereotype, the State law to the contrary notwithstanding. And the effect of that decision was to invalidate California State protective laws.

The guidelines, which were published on April 5, 1972, we have attached to the prepared statement.<sup>1</sup>

I think there are other things that perhaps I should touch on just lightly. We have hopefully eliminated many of the State laws which do in fact permit discrimination because of sex.

We have attempted to eliminate the separate lines of progression and seniority systems which lock women in or lock them out of certain lines of progress.

We have attempted to eliminate discrimination against married women, and require under our guidelines that the employer extend to the women of his employment in his company the same benefits which are extended to not only the males but indeed to the families of many of the males.

Our basic position is that the benefits, that is, the end results, should be the same, notwithstanding the fact that it may cost more money for a woman in terms of premiums being paid in and notwithstanding the fact that a woman's life expectancy is longer than that of a male; we still feel that if a male is being paid at his retirement \$100 a week, for example, the woman, in spite of the fact that she may live longer, should also get \$100 a week.

We have also taken the position that it is a violation for an employer to file in a help wanted ad listing as its heading "male help wanted" or "female help wanted." Any employer who so files is in violation of title VII. And I think that the *Pittsburgh Press Company* case which just came down June 21 of this year, will go a long way to eliminate the on-going type of discriminatory practices which are being practiced both by the newspapers in continuing to carry the ads, dividing them up male-female, as well as the employment agencies who seek to use those services.

In the area of retirement plans we have also taken the position that mandatory retirement ages are in violation of title VII. We see no reason why a woman should have to retire at the age of 55 and a man retire at the age of 60. We think that that should be eliminated.

There are one or two other things that I should mention, Mrs. Griffiths. One is contained in your statement, which I have before me, where you have indicated that we do have a backlog. There is no question but that we have a very substantial backlog. The indication here

<sup>1</sup> See guidelines, beginning on p. 83.

is that the backlog is due to either administrative problems or a shortage of competent staff, or both. I would respectfully take issue with that, Mrs. Griffiths. We have, in the 4½ years that I have been chairman, gone from the point where we had only 350 to 400 employees to the present point of having over 1,800 employees. We have gone from the point of having some 13 offices to where we now have some 45 offices. We have, as I have indicated, established 5 litigating centers. We have increased the number of attorneys on our staff from the point where we had 30 attorneys to the present size of some 250 attorneys. The staff itself has increased; that is, the General Counsel's staff itself has substantially increased. We started out with about 50 employees all told in the General Counsel's staff. We now have about 450 persons.

We have, of course, issued a number of sets of guidelines. We have, as I have indicated before, filed 122 cases in court. And in spite of all that, we have been able to work out the settlement with A.T. & T., which, of course, is a monumental task when you consider the hundred thousand pages of documents which had to be condensed, reviewed, analyzed, and synopses made of those. We have submitted to the company summaries of our position of the discriminatory practices that we found when we made that examination.

So I think that the backlog is not due to lack of administrative ability. We have installed a performance measurement system which will give us, for the first time, the ability to determine what we are accomplishing in terms of dollars and cents and people being put in jobs. This has already been established in our compliance area and in our litigating area. We have installed work measurement systems.

So you see that we have quite a great deal of things which have been accomplished. That is not to say we do not have problems. Indeed, I would be the first to admit that we certainly do have problems.

As far as the staff is concerned, I will have to be very honest and say that I am very fortunate in having an excellent staff. Of course we have persons here and there who do not measure up to what our standard might be, but that is to be expected in any organization, and particularly in an organization which has expanded as rapidly—or at such a rapid pace as we have.

We have instituted, I should say, very, very substantial training programs throughout the Commission.

And finally, let me say this: One of the things that I guess I am most proud of is that while we have been able to staff up in a very short period of time, and very extensively, and to get competent persons who fill all of these positions, our record as far as the employment of women is concerned in the Federal Government stands without parallel. I should indicate to you that of the super grade positions in our agency, 21 percent of those positions are females, as compared to the Government average of 1.7. At grade 15, 18 percent of our employees are female as compared to 3.2 for the Federal Government. At grade 14, again 18 percent, as compared to 3.8 percent. At grade 13, 27 percent, as compared to 4.7. At grade 12, 32 percent, as compared to 7.9. And so on.

We have been very, very conscientious about the problems of women, not only in terms of the private sector, but certainly in terms of what we ourselves are doing in the Federal Government, because I believe,

and I sincerely believe, that the Federal Government must be the leader, we must set the standards.

I would be very happy to answer any questions that you might have. Thank you.

[The prepared statement of Mr. Brown and attached EEOC guidelines follow:]

PREPARED STATEMENT OF HON. WILLIAM H. BROWN III

Madam Chairwoman and members of the Committee: I am pleased to appear before you this morning and respond to your request that I summarize and evaluate the results achieved for women under Title VII since 1965.

The Equal Employment Opportunity was established by Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination based on race, color, religion, sex and national origin in all aspects of employment. The Commission is bipartisan in composition and its Members serve five-year terms on a staggered basis. Commissioners are appointed by the President, with the advice and consent of the Senate. The President designates the Chairman and the Vice Chairman.

As you know, by its passage of the Equal Employment Opportunity Act of 1972, the Congress extended coverage to State and local governments as well as to public and private educational institutions. It also increased coverage to employers with 15 or more employees or members instead of the previous 25. With the expanded coverage, some 80 million workers now are eligible to file complaints with EEOC. Most importantly, it gave us the authority to take employers and unions to court to put a stop to discriminatory practices. I will discuss our activity in this regard in greater detail at a later point.

The President's request for Fiscal Year 1974 funds for EEOC is \$46,934,000 and 2,388 positions. This represents an increase of \$14,934,000 and 479 positions over the levels appropriated for FY 1973. The House Appropriations Committee has recommended \$40,000,000, which is \$8,000,000 over the appropriation for fiscal year 1973. Changes in procedures for disposition of charges by EEOC Field Directors have resulted in sharp increases in the number of investigations and determinations completed. A computer-based work measurement system now provides current information on production, productivity and actual resource utilization by field office and function. We are also in the process of implementing a Performance Management System which is already installed for Compliance and Litigation activities and further anticipate that by end of FY 1974, this "PMS" will extend to all program areas.

In the fifteen months since this direct enforcement authority was granted us, we established and staffed five Litigation Centers. They are in Atlanta, Philadelphia, Chicago, Denver and San Francisco. The General Counsel Staff has gone from 30 attorneys to over 200 and we expect to have 50 additional attorneys by the end of FY 1974.

Since the filing of our first complaint in May, 1972, we have used this authority both judiciously and fully. As of July 6, 1973, we had filed a total of 122 lawsuits. These suits cover both large and small employers in every geographic region of the country and all the protected classes of our Act. I might add that in 67 of these suits sex discrimination is alleged as one of the bases. Specifically, discrimination because of sex, female, is the solitary allegation in 28 of the complaints filed and it is one of the allegations, combined with others, in 39 of the complaints.

Discrimination because of sex was an issue in two of the three cases which have been settled to date. In the case against General Motors Corporation, Fisher Body Division, in St. Louis, a consent decree was entered which was specifically aimed at certain employment practices in that plant which discriminated against women in hiring and promotion. Under the terms of the decree, GM will implement certain affirmative recruitment and job promotion plans working toward a goal of 20 percent women among hourly rate production and assembly jobs over a two-year period. GM also agreed to implement specific steps in its recruitment, hiring, promotions and other terms and conditions of employment at its St. Louis plant which would be consistent with the requirements of Title VII.

In our action against National Can Corporation, we obtained a settlement agreement which eliminates any sex-discriminatory policies alleged to have

been practiced by the company in its California operations and eliminates any restrictions on the amount of overtime work which the company may have placed on its female workers because of reliance on California law. The agreement also provides for \$22,000 in back pay to 95 affected class members.

I consider our AT&T settlement to be the most significant legal settlement in civil rights employment history and one which certainly illustrates just how costly employment discrimination can be to an employer.

American Telephone and Telegraph is, as you know, the world's largest non-governmental employer, with some 750,000 workers. More than half of those employees are women. Only the United States Government, with 555,000 women on its payroll, employs a greater number.

The approximately 410,000 female employees at AT&T were not evenly distributed throughout all levels of the system. Women composed 99.8 per cent of the system's secretaries, 99.9 per cent of the operators, and 98.9 per cent of the service representatives. At the same time, in two highly skilled job categories, only 1.1 per cent of the craft workers and 1.6 per cent of the operatives were women. And while 41.1 per cent of the company's managers were women, 94 per cent of them were in the first level of management, while less than 50 per cent of the male managers were at that level.

The agreement was signed on January 18 of this year by EEOC, the Department of Labor and the American Telephone and Telegraph Company and its 24 operating companies. The provisions of the agreement were embodied in a consent decree which was entered simultaneously in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia. Under this agreement AT&T will make one-time payments totaling approximately \$15 million to some 13,000 women whom the government claims had been injured by the companies' employment practices. In addition to the one-time payments, a new promotion pay policy and wage adjustments resulting from the agreement will increase wages for many women, minorities and other employees by an estimated minimum of \$23 million a year. The plan that AT&T agreed to follow contained three major parts:

*First*, the companies will develop goals for increasing the utilization of women and minorities in each job classification of all 700 establishments within the Bell System, and will set specific hiring and promotion targets.

*Second*, the plan included an unusual provision for the establishment of goals for the employment of males in previously all-female job categories.

*Third*, the companies will also take the necessary steps to assure that their transfer and promotion procedures are in compliance with the Equal Pay Act, the Civil Rights Act of 1964, and Executive Order 11246.

The AT&T settlement is felt across the country; as employers recognize the positive climate of Supreme Court decisions in the area of civil rights legislation, they will know that EEOC is very much in business and that it means to enforce the law.

The Commission has also filed motions to intervene in a number of cases. One I shall mention is a class action suit filed against the General Insurance Company of America in Seattle, Washington. The suit alleges that General Insurance discriminates against females in the indicating of sex preference in advertising job openings; hiring and assigning on the basis of sex; paying women less than men for the same or similar jobs; restricting promotional opportunities of females and by excluding females from supervisory positions.

In all of the suits filed, EEOC has asked the court for an injunction against further discrimination by the employers and unions and for backpay with interest, improved hiring, transfer and promotion practices, and in some instances reinstatement of discharged employees. In the majority of cases we have asked that affirmative action programs be implemented providing equal employment opportunity for minorities and women.

There are many cases involving sex discrimination that have already been decided by the courts.

In *Phillips v. Martin-Marietta Corp.*, the Supreme Court unanimously held that the law forbids "one hiring policy for women and another for men" when both are parents of pre-school age children.

In *Rosenfeld v. Southern Pacific Company* the court adopted the Commission's *Guidelines on Discrimination Because of Sex*, and stated that "a woman must be allowed the same opportunity as a man to demonstrate her physical ability to perform a job and must not be denied a job on the basis of some sex-stereotype, the State law to the contrary notwithstanding." The effect of the decision was

to invalidate California's State "protective" law. These *Guidelines*, as published April 5, 1972, are attached to this statement.

In other decisions, such as those involving seniority systems, the courts have held that the establishment of seniority lists or lines of progression based on minority status or sex violates the Act.

Of all the charges filed with the Commission, discrimination because of sex is alleged as a basis in approximately 25%.

As I mentioned above, the Commission's *Guidelines on Discrimination Because of Sex* were adopted by the Court of Appeals for the Ninth Circuit in the case of *Rosenfeld v. Southern Pacific Co.* These guidelines narrow, almost to a vanishing point, a company's legal grounds for keeping women out jobs traditionally categorized as "for men only," or for barring men from jobs traditionally held by women.

The Sex Guidelines cover the following areas:

#### 1. SEX AS A BONA FIDE OCCUPATIONAL QUALIFICATION (OR BFOQ)

The Commission believes that the bona fide occupational qualification (BFOQ) exception as to sex should be interpreted narrowly. Labeling jobs as "men's jobs" and "women's jobs" tends to deny employment opportunities unnecessarily to one sex or the other.

Every person has to be considered on the basis of individual capabilities, unless sex *per se* is a BFOQ for the particular job—such as a model for women's or men's clothes, an actress or actor.

#### 2. SEX-ORIENTED STATE EMPLOYMENT LEGISLATION

Many States have laws or regulations that apply to the employment of females. Among these laws are those which prohibit or limit the employment of women in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII.

A number of States require that minimum wage and premium pay for overtime be provided for women employees. An employer engages in an unlawful employment practice if he refuses to hire or otherwise limits the employment opportunities of women applicants or employees in order to avoid paying minimum wages or overtime pay required by State law, or if he does not provide the same benefits for men employees.

#### 3. SEPARATE LINES OF PROGRESSION AND SENIORITY SYSTEMS

It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a BFOQ for that job.

#### 4. DISCRIMINATION AGAINST MARRIED WOMEN

The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is discriminatory.

#### 5. JOB OPPORTUNITIES ADVERTISING

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a BFOQ for the particular job involved. Employers or employment agencies who place advertisements in sex-segregated columns are violating the law. Our position was reinforced by the decision of the Supreme Court, handed down on June 21 of this year, in the case of *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*. The Supreme Court held that a city ordinance as construed to forbid newspapers to carry sex-designated advertising columns for non-exempted job opportunities did not violate a newspaper's First Amendment rights.

## 6. EMPLOYMENT AGENCIES

An employment agency cannot discriminate against any individual because of sex. An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the requirements is not based upon a BFOQ.

## 7. FRINGE BENEFITS

We believe that in achieving equal employment opportunity for women, fringe benefits have to be the same for all employees, even if it costs more to provide these benefits. EEOC insists that if group health insurance plans are provided at the expense of the employer, and hospital and surgical benefits are available to dependents of employees, identical coverage must be available to all employees without a "head of household" restriction. Any maternity benefits included in such a plan should likewise be available to all employees without restrictions based on marital or "head of household" status.

In the area of pension and retirement plans, EEOC insists that optional or compulsory retirement ages shall not differ because of sex. In the area of profit sharing, EEOC has already determined one company's plan to be discriminatory because women were able to collect their share upon termination of employment, but men were unable to collect their share unless they were 50 years old or disabled.

## 8. EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH

Physical disabilities caused by pregnancy, miscarriage, abortion, childbirth or recovery therefrom are, for all job-related purposes, just like any other disability and should be treated as such under any health or temporary disability insurance or sick leave plan.

The duration of leave, accrual of seniority, reinstatement, and other benefits and privileges of employment should be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to all other disabilities.

We expect that there will be a substantial increase both in the number of law suits we will file as well as in the number of charges to be filed with the Commission in which discrimination because of sex will be alleged as an issue. We hope that the increase in legal actions will cause many employers to re-examine their own equal employment opportunity profiles. We foresee that as employers become convinced that this agency means business, more cases will be settled out of court with increased benefits resulting for victims of employment discrimination.

# GUIDELINES ON DISCRIMINATION BECAUSE OF SEX



Title 29, Labor, Chapter XIV, Part 1604, As Amended  
(As of March 31, 1972)

## PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

### Sec.

- 1604.1 General Principles.
- 1604.2 Sex as a Bona Fide Occupational Qualification.
- 1604.3 Separate Lines of Progression and Seniority Systems.
- 1604.4 Discrimination Against Married Women.
- 1604.5 Job Opportunities Advertising.
- 1604.6 Employment Agencies.
- 1604.7 Pre-employment Inquiries as to Sex.
- 1604.8 Relationship of Title VII to the Equal Pay Act.
- 1604.9 Fringe Benefits.
- 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

Authority: The provisions of this Part 1604 are issued under Section 713(b), 78 Stat. 265, 42 U.S.C., Sec. 2000e-12.

Source: The provisions of this Part 1604 appear at 37 F.R. 6835, April 5, 1972, unless otherwise noted.

---

For further information and interpretations, please contact:

U.S. Equal Employment Opportunity Commission  
Office of the General Counsel  
1800 G Street, N.W.  
Washington, D. C. 20506



## PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, § 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

## Section 1604.1 General Principles.

(a) References to "employer" or "employers" in Part 1604 state principles that are applicable not only to employers, but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

## Section 1604.2 Sex as a Bona Fide Occupational Qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels -- "Men's jobs" and "Women's jobs" -- tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

- 2 -

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented state employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that state laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by Title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established

unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of states require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by state law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented state employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of Title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the state law is in conflict with and superseded by Title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some states require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

#### Section 1604.3 Separate Lines of Progression and Seniority Systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect

any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression" and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

#### Section 1604.4 Discrimination Against Married Women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

#### Section 1604.5 Job Opportunities Advertising.

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

Section 1604.6 Employment Agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Section 1604.7 Pre-employment Inquiries as to Sex.

A pre-employment inquiry may ask "Male \_\_\_\_\_, Female \_\_\_\_\_"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Section 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is co-extensive with that of the other prohibitions contained in Title VII and is not limited by Section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of Section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under Title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Representative GRIFFITHS. Thank you very much.

Is Mr. DeLury now in the room?

Would you mind taking the stand up here, please?

Senator JAVITS.

Senator JAVITS. Thank you, Mrs. Griffiths.

First may I say how very honored I feel to be associated with you in this effort to make our statutory promise meaningful. Though I can't attend as often as I would like, I want to express my confidence in you and the fine work you are doing.

The only statement I would like to make Mrs. Griffiths, is that I too have heard in a rather pertinent way about the backlog and the administrative difficulties of the EEOC. I am just wondering, Mrs. Griffiths, whether it might not be desirable if we asked the General Accounting Office to take a look at the operations of the agency in order to give us some estimate of its efficiency, et cetera. We could also do this in the Government Operations Committee of which I am a member.

In deference to Mrs. Griffiths and the fine job she is doing, it would be even more fitting to let this committee handle it and make the request in which I would happily join.

Representative GRIFFITHS. Let's ask that they also check on OFCC as to their employment practices.

Senator JAVITS. By all means.

Mr. BROWN. Senator, we would have absolutely no objection to that. As a matter of fact, they have been in two of our offices already. The reports that we have seen coming out of them were very complimentary. And I think that in spite of the fact that we have increased the production in some areas twice, and in some areas even three times, the number of incoming charges are just overwhelming. And I would be very happy to have the General Accounting Office come in and look at that operation.

Representative GRIFFITHS. Thank you.

Mr. DeLury, knowing that we will put your full statement in the record, would you try to summarize your statement in about 9 or 10 minutes?

Mr. DeLURY. I will try.

Representative GRIFFITHS. Thank you very much. You may proceed.

Mr. DeLURY. Mrs. Griffiths, will there be questions after this statement?

Representative GRIFFITHS. We will have questions and answer after that.

Mr. DeLURY. Can I have some of my staff appear?

Representative GRIFFITHS. Yes, your staff can help you.

**STATEMENT OF HON. BERNARD E. DeLURY, ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY CARMEN R. MAYMI, DIRECTOR, WOMEN'S BUREAU; GEORGE TRAVERS AND DORIS WOOTEN, OFFICE OF FEDERAL CONTRACT COMPLIANCE; AND MORAG M. SIMCHAK, EMPLOYMENT STANDARDS ADMINISTRATION**

Mr. DeLury. First of all, I would just like to say that I am pleased to be here this morning, although there was a conflict with a Senate hearing. At this hour we were supposed to give testimony before the Senate Appropriations Committee. Several of the people that were supposed to be here with us today were unable to be here because I asked them to represent us at the Senate Appropriations hearing.

Basically I am new to this area, as I am new to the Department of Labor and the Employment Standards Administration.

I recognize the importance of the problems facing women workers and women in general. There are 33 million women workers in this Nation, and they represent 39 percent of the work force.

Because of various social and economic changes, more and more women have found it necessary to go into the workplace. There are a variety of reasons: To support themselves, help their families, and to exercise their rights and opportunities to seek career satisfactions.

Secretary Brennan and all of us in the Department of Labor are fully committed to meeting the responsibilities of the women of this Nation. At a recent meeting with representatives of some women's groups, the Secretary pledged a working partnership with women to improve the status of working women in all areas of the economy. He also proposed setting up a Women's Advisory Committee to the Department of Labor.

We do have the legal tools to continue to build a strong and effective program to end sex discrimination.

We enforce and administer the Equal Pay Act of 1963. The Wage and Hour Division of the Employment Standards Administration, as you know, enforces the Equal Pay Act. We have approximately 900 compliance officers in the field.

As of July 1, 1973, under the act, 142,597 employees were found to have been underpaid by \$65,578,600 since the June 1964 effective date. Not included in this figure is the approximately \$7.5 million A.T. & T. agreed to pay under the Equal Pay Act to approximately 3,000 of its women employees.

More than 500 lawsuits have been filed by the Department to date.

The Secretary has recently asked for authorization to sue for liquidated damages under FLSA, based on back wages owed to employees. As it stands now, we can only sue for what was due to the employee in the first instance. We would think that authorizing the Secretary in his discretion to sue for liquidated damages, based on back wages owed to all employees, will cause an employer to think twice before risking a violation of the FLSA's equal pay provisions.

Another tool we have in the Employment Standard Administration is Executive Order 11246 as amended by Executive Order 11375. This is the legal basis for the Office of Federal Contract Compliance Program, mandated by the President, to eliminate discrimination on

the basis of race, color, religion, sex, or national origin by Government contractors, subcontractors, and federally assisted construction contractors.

We involve ourselves in the area of affirmative action programs to meet these requirements. This comes under Revised Order No. 4.

And, of course, we have the Women's Bureau—which was established in 1920 to promote the welfare of working women. This Bureau has as its primary goal improving the employment of women, increasing employment opportunities for them, reducing substantially discrimination in employment based on sex. In all of these areas the Bureau recognizes the double discrimination suffered by minority women.

The Women's Bureau is particularly aware of the need to extend its services to women who are hard to reach through the usual channels of communications, minority women, blacks, Spanish-speaking, Indians, Asians, low-income women, geographically isolated women, and women heading families. They enlist the assistance of voluntary women's groups and knowledgeable individuals and provide them with the information and assistance they need to work effectively to elevate the status of all women in all communities.

Within the Department, under a Secretary's order, the Women's Bureau has the responsibility for coordination of the Department of Labor's operations pertaining to women. This order also designates the Bureau's Director as special counselor to the Secretary of Labor for Women's Programs.

I have a quote here from Secretary Brennan which reads as follows:

There is no reason qualified women should not be able to work where and when they want, at jobs they want to do. Every American has that basic right. Our task must be to turn rights into reality, and remove barriers to non-traditional occupations for women in business, industry and government at all levels.

Mrs. Griffiths, I wholeheartedly endorse the Secretary's statement. And I reaffirm my commitment to meet our responsibilities to the women of this Nation under the Office of the Employment Standards Administration.

[The prepared statement of Mr. DeLury follows:]

PREPARED STATEMENT OF HON. BERNARD E. DELURY

Congresswoman Griffiths and members of the committee, I am pleased to appear before you today to discuss Department of Labor efforts to end sex discrimination in employment. I have with me Carmen R. Maymi, Director of the Women's Bureau, Philip J. Davis, Director, Office of Federal Contract Compliance, Ben P. Robertson, Acting Wage Hour Administrator, Morag M. Simchak of my office and Doris D. Wooten of the Office of Federal Contract Compliance.

The Department of Labor is keenly aware that women are a vital part of the Nation's human resources. Today there are more than 33 million women workers who make up 39 percent of the work force. Because of social and economic changes, more and more women have found it necessary or desirable to enter the workplace. Women are working for a variety of reasons: to support themselves, to help support their families, and, increasingly, to exercise their rights and opportunities to seek career satisfactions.

Secretary Brennan and all of us in the Department of Labor are fully committed to meeting our responsibilities to the women of this Nation. In a recent meeting with representatives of some women's organizations, the Secretary pledged a partnership with women to improve the status of working women in all areas of the economy. He also proposed setting up a women's advisory committee to the Department of Labor.

The Department of Labor has the legal tools to continue to build a strong and effective program to end sex discrimination. As Assistant Secretary for Employment Standards I believe that there is no substitute for a strenuous and concerted use of these tools to assist women to obtain their legal rights.

One of our most powerful legal authorities is the Equal Pay Act of 1963, an amendment to the Fair Labor Standards Act. This law was recently extended to include executive, administrative, professional and outside sales employees, by the Education Amendments of 1972.

The Equal Pay Act requires the same rate of pay for men and women doing substantially equal work, requiring substantially equal skill, effort and responsibility under similar working conditions in the same establishment. Where discrimination exists, pay rates of the lower paid sex must be raised to equal those of the higher paid sex.

The Wage and Hour Division of the Employment Standards Administration enforces the Equal Pay Act through the efforts of its approximately 900 compliance officers. Investigations can be initiated regardless of whether a complaint has been received.

As of July 1, 1973, over 500 suits had been filed under the Act; 142,597 employees were found to be underpaid; and \$65,578,600 had been found due in back wages. Not included in this figure is the approximately \$7.5 million paid to women under the Equal Pay Act by AT&T to approximately 3,000 of its employees. This amount was part of the \$15 million settlement negotiated jointly by the Department of Labor and by the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act. The AT&T settlement is both an example and result of a close working relationship with another agency.

We in the Department of Labor are committed to vigorous enforcement of the Equal Pay Act. Secretary Brennan before the Senate Subcommittee on Labor last month urged the strengthening of the enforcement powers of the Secretary of Labor under section 16(c) of the Fair Labor Standards Act. As it stands now, if an employer violates the Act and is sued by the Labor Department on request of an employee, the employer only stands to pay in back wages that amount which would have been due had the employer obeyed the law. Private suits by underpaid employees do carry the threat of a judgment for liquidated damages in addition to back pay. But these suits are infrequent and an employee can only sue for his own wages and an equivalent amount in liquidated damages. Authorizing the Secretary in his discretion to sue for liquidated damages based on back wages owed to all employees will cause an employer to think twice before risking a violation of the Act.

Another important tool available to the Employment Standards Administration is Executive Order 11246, as amended by Executive Order 11375. This is the legal basis for the Office of Federal Contract Compliance program, mandated by the President, to eliminate discrimination on the basis of race, color, religion, sex or national origin by Government contractors, subcontractors and federally-assisted construction contractors. The program is premised on the right and the duty of the Executive Branch to determine the terms and conditions upon which it will contract with private parties for the goods and services required for the Government's operations.

The specifics of the Executive Order have been detailed in a series of regulations, orders and guidelines.

One of the most important of these implementing orders is Revised Order No. 4, which applies to service and supply Government contractors, and further implements the affirmative action requirements of the Executive Order. It requires that a written affirmative action program be developed for each of the contractor's establishments.

The objective of the affirmative action program is to ensure that women and minorities who are qualified for employment positions are given equal opportunity to acquire such positions. Experience has shown that laws and regulations which simply prohibit discrimination have little or no measurable result in terms of changing the makeup of the work force. Also, the courts have held that affirmative action requires more than just the cessation of discriminatory practices. Past discrimination has so handicapped women and various minorities that the effects of the past continue into the present. This is why we require affirmative action and why we are dedicated to seeing that the OFCC equal employment opportunity compliance program is effective.

In taking affirmative action, a contractor is expected to examine the firm's entire employment process for cause and effect relationships which result in

discrimination. However, nowhere in the process is discrimination or preferential treatment permitted or required. A contractor would not be determined to be out of compliance solely because goals have not been met, as long as a good faith effort has been made to meet these goals.

Order No. 4 was revised with the goal of equal employment for those who have historically suffered discrimination in employment. Consultants were utilized in developing the Order from industry, labor, women's groups, human resource organizations and agencies experienced in the employment problems of minorities and women. The revised Order calls first for a utilization analysis by an employer. If and when an employer finds underutilization an affirmative action plan with goals and timetables for women and minorities must be developed.

As part of its continuing effort to end sex discrimination, the OFCC issued sex discrimination guidelines in June of 1970. Under these guidelines, which are now being reviewed, an employee of either sex shall have equal opportunity to fill any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification (BFOQ). The same narrow interpretation of BFOQ is given as applies under Title VII of the Civil Rights Act. These guidelines apply in all areas of employment from recruitment and training to promotion to termination. The Department has a policy of working closely with other Federal agencies. For example, in May 1970, the OFCC and EEOC agreed to a memorandum of understanding which provides for coordination and exchange of information.

I would now like to turn to the Women's Bureau. Congress established the Bureau in 1920 to promote the welfare of working women, and that purpose has been central to the activities of the Bureau ever since, even though goals and programs have become far reaching in line with the changing needs of women workers and the growing importance of their contribution to our economy.

The Bureau has as its primary goals: (1) improving the employability of women; (2) increasing employment opportunities for them; and (3) reducing, substantially, discrimination in employment based on sex. In all of these the Bureau recognizes the double discrimination suffered by minority women.

To help women workers advance to more skilled and responsible jobs, the Bureau works with both women and employers to open more jobs and apprenticeships to women—jobs that have been traditionally reserved for men—and to promote the movement of women into mid- and top-level jobs in management. Also encouraging is the development of a human services industry that can provide women with an opportunity for upward and lateral mobility in related occupations.

The Women's Bureau is particularly aware of the need to extend its services to women who are hard to reach through the usual channels of communication: minority women (blacks, Spanish-speaking, Indian, Asian) low-income women—geographically isolated women—and women offenders. It enlists the assistance of voluntary women's groups and knowledgeable individuals and provides them with the information and assistance they need to work effectively to elevate the status of all women in all communities.

Within the Department, under a Secretary's Order, the Women's Bureau has responsibility for coordination of the Department of Labor's operations pertaining to women. This Order also designates the Bureau Director as Special Counselor to the Secretary of Labor for women's programs. This means that the Secretary relies on the Bureau for input into the formulation of policies and the designing of programs to make sure the best interests of women workers are served.

As Secretary Brennan has stated:

"There is no reason qualified women should not be able to work where and when they want, at jobs they want to do. Every American has that basic right. Our task must be to turn rights into reality, and remove barriers to non-traditional occupations for women in business, industry and government at all levels."

I wholeheartedly endorse the Secretary's statement and reaffirm my commitment to meet our responsibilities to the women of this Nation. Thank you. We would now be glad to respond to any questions that you might have.

Representative GRIFFITHS. Thank you very much, Mr. DeLury.

I think the important word is "Qualified", who is going to judge who is the qualified woman, because that very word can be used to disqualify most women, and has been. You never find a qualified woman. And, of

course, it is because you look through the eyes of prejudice. You are not looking at it objectively. There are such women.

You have just pointed out, Mr. DeLury, that the Labor Department is planning to set up a women's advisory committee.

Mr. DeLury. Yes.

Representative GRIFFITHS. How can you afford to do so when you do not adequately fund the Citizens Advisory Council on the Status of Women?

Mr. DeLury. Mrs. Griffiths, I would like to call upon Carmen Maymi, the Bureau Director, to assist me with this question.

Representative GRIFFITHS. Will you identify yourself please for the reporter.

Mrs. MAYMI. Carmen Maymi, newly appointed Director of the Women's Bureau.

On the issue of the Citizens Advisory Council on the Status of Women, it is a Presidential committee in which the President chooses and selects the persons who will serve. The Citizens Advisory Council is funded through the Women's Bureau budget, and there is an \$80,000 allocation to provide for certain support services to the Citizens Advisory Council. When the Secretary made a commitment to some representatives of seven women's organizations, he approved of the idea and their idea of providing an advisory committee to his Department. He had in mind really the development of a relationship with women whereby a channel would be provided within the Department for the women to be able to take a close look, and intimately get involved in the policy decisions and the directions and, of course, the allocation of resources that the Department would make for servicing the needs of women.

We believe that, of course, the Citizens Advisory Council has a very important role, and it has an important role in Government to take a look at all agencies, and take a look at all aspects of women, and women's affairs in this country. While the advisory committee would have a more limited scope—

Representative GRIFFITHS. The Citizens Advisory Council on the Status of Women, it is funded through the Department of Labor?

Mrs. MAYMI. Yes, it is.

Representative GRIFFITHS. Why couldn't you give it more staff? It has only two members on its staff, and it only has enough funds to have two meetings a year. Why don't you give it more staff, and more money for meetings?

Mrs. MAYMI. I would think that this would be part of the budget allocation that the department would have to consider in terms of all the resources.

Representative GRIFFITHS. I see.

Well, Mr. DeLury, just how strong is the commitment of the Secretary of Labor?

Mr. DeLury. From what I have heard and the way I read it, it is a pretty strong commitment.

Representative GRIFFITHS. How much money is the new committee going to have?

Mr. DeLury. I have no idea.<sup>1</sup>

<sup>1</sup> See letter of response to Representative Griffiths, dated July 31, 1973, beginning on p. 108.

Mrs. MAYMI. There has not been any discussion of any specific funding allocation. There has been, however, I believe, the identification of staff within the Women's Bureau.

Representative GRIFFITHS. And how many staff will it have?

Mrs. MAYMI. At the moment it is in the proposal stage, and it is really a discussion that we are having in-house to see the possibility of having a fully equipped and funded committee.

Representative GRIFFITHS. It sounds more like another long delay in getting anything done. It would be far better in my judgment if you would use the committee already set up, funded it adequately, give it some staff, and let it work.

Aren't you now making your pitch to the Senate Appropriations Committee for funds?

Mr. DELURY. Yes, I am supposed to be there now.

Representative GRIFFITHS. Today?

Mr. DELURY. Yes.

Representative GRIFFITHS. How are you going to get some money for your new committee if it is still in the talking stage, and you are not asking for money for it now? The bill is already through the House, isn't it?

Mrs. MAYMI. Mrs. Griffiths, I would also like to add one item that has not been brought up in the discussion. And that is that the Citizens Advisory Council was set up by an executive order, and it is contingent upon the existence of an Interdepartmental Committee on the Status of Women of which the Secretary of Labor is the executive chairman, and the Director of the Women's Bureau.

Representative GRIFFITHS. Are you really saying that it is the President's fault that we do not have any more money for the Citizens Advisory Council?

Mrs. MAYMI. I am not saying that, I am saying that there needs to be the involvement of all agencies, all government heads to come together to activate this Interdepartmental Committee on the Status of Women, and that way give the proper role to the Citizens Advisory Council.

Representative GRIFFITHS. But you fund it, the Labor Department funds it. I do not think you can skip your responsibility quite that easily by passing it back to another department head or to the President. I simply think the Department of Labor is refusing to fund the council, and that setting up another committee is just delaying action.

Mr. Brown, I do appreciate everything you have done, but I would like to ask you a political question. What have you done lately for us? Since 1972 you have filed only 122 lawsuits. Since July of 1972 you have only settled three. Now, a witness here yesterday said that of Fortune's 500 not one is in full compliance with EEOC. Is that true or not?

Mr. BROWN. Mrs. Griffiths, I would have to say that probably is a true statement. We have of course filed only 122 suits. We originally estimated for the purposes of the budget that we would file in the same period of time 90 suits. And when you consider the fact that we were operating without any attorneys whatsoever who had trial experience, and the need to staff up the General Counsel's Office, as I have indicated, from some 30 lawyers to over 240 lawyers, the need to establish 5 litigating centers, the need to establish the actual regulations under

which we were operating, the need to train the lawyers—I think this is almost a singular achievement, to have accomplished this within a 1-year period of time. We, of course, are very much concerned.

We realize that it cannot be done merely by filing suits. One of the things that we are in the process of doing now is trying to work out on a noncompliance, nonadversary basis, settlements of the A.T. & T. type without the necessity of going through the courts. And we are in the process of discussing that.

Representative GRIFFITHS. Let us consider, then—the witness yesterday pointed out that if you take Fortune's 500 and proceed at the rate of 1 a year, it is going to be well into the year 2000, something like 2400, before we get through those Fortune's 500. And some of us now alive would like to see them comply before we die.

Mr. BROWN. You and I both would like to see that.

Representative GRIFFITHS. Do you need staff? Do you need more money? Do you need more support from Congress? What do you need?

Mr. BROWN. Obviously, we always need more staff and we need more funds. But I would say that even with more staff and more funds that is not the sole answer to it.

Representative GRIFFITHS. Could you sort of serve notice on those 500 today that within our lifetime we expect them to comply.

Mr. BROWN. I would think, Mrs. Griffiths, that of the 122 suits that we have filed already, as many as 90 of those are against the Fortune's 500. So that we have not ignored them. As a matter of fact, we have targeted—

Representative GRIFFITHS. They can all afford to pay.

Mr. BROWN. We have targeted in on them very much. I think that there will be a ripple effect from the A.T. & T. settlement. We have talked with the general counsels throughout the country of major organizations, and major corporations, and unions, and the effect of that settlement on the kind of advice they have been giving to the various companies that they represent is very amazing. They have changed completely. That is not to say that things are going to change overnight. Indeed, we have to continue filing suits. Indeed, we have to have many, many A.T. & T. type settlements.

Representative GRIFFITHS. I would like to know: What was the response of the union? The unions were as guilty as the companies, because they were negotiating contracts all the time that set up these pay differentiations. How have they reacted?

Mr. BROWN. The union in the A.T. & T. case, I am very disappointed to say, particularly the CWA, did not react very favorably. When our Commission filed with the Federal Communications Commission back in December of 1970, at that point, as you realize, we had no enforcement powers at all. We were trying to make do. I went the following month to meet with the president of that union. I suggested to him that it would be very, very helpful, and indeed it would be to his own advantage, since so many of his members were women, that he should come in with the Commission and present arguments on behalf of the people that he represents in his union. He saw fit at that time to say: "Well, you have a very good approach, you are doing an excellent job, and something that needs to be done desperately. But I am not inclined to go in with you at this point."

After the settlement was made—and of course you read the newspaper accounts of it—after everything was worked out, then he comes forward saying, I want to be a part of this settlement.

And we said, in effect, over our dead body you will, because I agree with you, I think that the unions have been just as guilty, in fact in many, many instances more so, than the employers of the discrimination against women.

Representative GRIFFITHS. Thank you.

Mr. DeLury, you said that the Women's Bureau has as its goals increasing the employment of women and reducing sex discrimination in employment. The only authority that the Women's Bureau has is to publish results of its investigations. If it is to affect employment opportunities for women, then it must be able to do something more than publish reports. How could the authority of the Women's Bureau be expanded?

Mr. DeLury. Mrs. Griffiths, if I may answer this way—I have another answer to give you on the previous question, the question of the budget—I would like to report back to you. Having been here 7 weeks I am not all that well briefed in the entire question, and whatever recommendations are made.

Representative GRIFFITHS. All right.

Mr. DeLury. As far as activating the Women's Bureau, I have always been a believer in saying so when I do not know all the answers. I believe the people that head up these programs, through their staff and through the outside people, know how to best operate. This is what has to be done with all program heads, delegate authority. I am now in the process of doing it through the normal channels that prevail here in Civil Service.

I want to comment on your question, because I am not hogging anything here, as far as Women's Bureau, workmen's compensation, OFCC, wage and hour enforcement, and all other program directors are concerned.

Representative GRIFFITHS. May I ask, Is there a man in the Department of Labor that really understands the competence of women in employment?"

Mr. DeLury. I will admit that I do not. I am trying to.

Representative GRIFFITHS. I wonder why the Department sent you up here?

Mr. DeLury. Well, you invited me here, and I gladly accepted, because I view this as a two-way street; I hope to gain more from your committee than I give.

Representative GRIFFITHS. We will let you answer the questions, and if you cannot answer them now, will you answer them for the record? And you can have some expert help.

Mr. DeLury. Absolutely.

Representative GRIFFITHS. The Defense Department will procure about \$29 billion worth of goods and services in this fiscal year, about the same as last year actually. As the largest purchaser in the Federal Government, has DOD ever terminated a contract for noncompliance with OFCC guidelines on sex discrimination?

Mr. DeLury. Mrs. Griffiths, I have two people here from OFCC. One is George Travers, and the other is Doris Wooten.

Representative GRIFFITHS. Mr. Travers.

Mr. TRAVERS. One of the problems that the Office of Federal Contract Compliance has is that it tends to be evaluated in terms of the number of contracts that have been debarred or terminated which is not really a measure of success of the program. The cancellation of a contract really represents failure in terms of being able to conciliate and increase the employment opportunities for minorities and women. There have been three debarments under the contract compliance program.

Representative GRIFFITHS. In defense contracts?

Mr. TRAVERS. Not in defense contracts.

Representative GRIFFITHS. Nothing has ever been done in defense contracts, is that right?

Mr. TRAVERS. That is right.

Representative GRIFFITHS. Have you ever succeeded in getting any contractor to employ women and minorities in any greater proportion than it ever anticipated doing, or in other jobs?

Mr. TRAVERS. Yes, we have.

Representative GRIFFITHS. How many people do you have working at this?

Mr. TRAVERS. The contract compliance program has a total budget of about \$32 million. There are 1,738 people in the compliance agencies who carry out the regulations of the Secretary of Labor, and 104 in OFCC.

Representative GRIFFITHS. How many of them check the Defense Department?

Mr. TRAVERS. For fiscal year 1974 the Department of Defense will have about 570 people in the contract compliance program, checking on the contractors assigned to them that are not just defense contractors. They are assigned compliance responsibilities, as are other agencies by independent industry.

Representative GRIFFITHS. How many of those check on sex discrimination?

Mr. TRAVERS. All compliance reviews under the Executive order cover all facets of the rules and regulations relating to sex discrimination.

Representative GRIFFITHS. What reports have they made to you?

Mr. TRAVERS. We have just instituted reporting requirements under new regulations, and those reports are just starting to come in. We do not have enough to tabulate them yet. But by the end of this year we should have reports that tell us exactly what has happened as a result of compliance reviews, and what progress is being made, and what goals contractors have committed themselves to for both women and minorities.

Representative GRIFFITHS. When they make a commitment to a goal, when a contractor makes a commitment to a goal, is this published for the employees?

Mr. TRAVERS. We have recently published disclosure regulations under the Freedom of Information Act, which says that affirmative action programs will be disclosed to the general public, including employees. In addition, the contractors have an obligation under order 4 to make the relevant portions of the affirmative action plan known to employees and prospective employees so that they can take advantage of its benefits.

Representative GRIFFITHS. How do they do it?

Mr. TRAVERS. The contractors would usually publicize their own programs without handing out copies of the affirmative action plan necessarily. The affirmative action plan is detailed, and goes into detailed analysis. They would let employees know through their own publications, or through other announcements, of what they are trying to do in terms of affirmative action.

Representative GRIFFITHS. If you find somebody who is not in compliance, and then they have a plan, you agreed upon a plan, for them to come into compliance, is that plan published?

Mr. TRAVERS. It is not published.

Representative GRIFFITHS. Why not?

Mr. TRAVERS. It is disclosable on request.

Representative GRIFFITHS. You mean if you are the employee in the plant, a woman employee, who seeks a better job, and wants to know if the employer is actually complying with the Federal requirements, she has to go into the personnel office and ask to see the plan?

Mr. TRAVERS. The contractor has an obligation to make the relevant portions of the plan known, that is not an obligation to give out the specific affirmative action program.

Representative GRIFFITHS. Why not?

Mr. TRAVERS. The regulations that were written under order 4 do not contemplate—

Representative GRIFFITHS. Who wrote the regulations?

Mr. TRAVERS. The Department of Labor.

Representative GRIFFITHS. Why did they write regulations like that? If you are going to make the first affirmative action plan disclosable, and then you find somebody is not in compliance, why don't you make that plan available when he agrees to come into compliance, why isn't that available to every employee without anybody asking for it?

Mr. TRAVERS. It is available to every employee.

Representative GRIFFITHS. How?

Mr. TRAVERS. The contractors have an obligation to make the employees aware of what they are trying to do in an affirmative action. In many cases there are better ways of communicating that than the details of the affirmative action program.

Representative GRIFFITHS. What better ways?

Mr. TRAVERS. The specific employee, for example, may be interested in only certain parts of the company and only certain jobs. To find out from reading the affirmative action program, he or she may have to go through hundreds of pages of detailed analysis about jobs that he or she is just not interested in.

Representative GRIFFITHS. I think it would be quite simple for the contractor to break it down so that the employees in this area could find out what affected them, and those over there would find out what affected them. Or are you going to make these plans effective in one General Motors plant and not others; is that it?

Mr. TRAVERS. The plants are doing it, so that each establishment would have their own affirmative action program. But let me make clear that under our disclosure regulations someone who wanted to see the affirmative action program could go to the contractor, and if the contractor refused to give it to him, he could come to us.

Representative GRIFFITHS. And what could you do?

Mr. TRAVERS. We would then give him the affirmative action program.

Representative GRIFFITHS. In contrast, the regulation pertaining to the disclosure of the corrective action program, revised order No. 14, May 21, 1973, bars OFCC and compliance agencies from disclosing to incumbent employees a copy of their employee's corrective action program; that is correct, isn't it?

Mr. TRAVERS. That is correct, although order 14 also contains a provision that is not meant to supersede or limit the disclosure regulations. The corrective action program is different from the affirmative action program.

Representative GRIFFITHS. Yes, indeed. In the corrective action program you have gone in, and you agree, and they agree that they are not in compliance. Now you have set up a plan, and then that plan is really not available to the employees, although an affirmative action plan would have been; right?

Mr. TRAVERS. The corrective action plan pertains only to the identification of people who continue to suffer the past effects of discrimination, and specific remedies for those individuals. It would be impossible for someone to be given remedies under the corrective action plan and not know about the corrective action plan. One point is that the employers are concerned that their own self-analysis and their own commitment in terms of making corrective action under the regulations without direction from the Government, if disclosed to outside groups, might lead to other suits against them.

Representative GRIFFITHS. Of course, the answer is, in addition, that if it is a corrective action for only one or two people, and that is made known to employees, there might be one or two others that find out they needed a corrective action plan of their own. Now, if this plan is not made public there is no way to monitor it or figure out whether a contractor is in compliance or he is not. If I were the Department of Labor I would be worrying about the employees.

Mr. TRAVERS. We are worrying about the employees.

Representative GRIFFITHS. I am glad to hear it, because I do not think the regulations sound like it.

Mr. TRAVERS. Let me distinguish between the corrective action plan that is developed by the contractor under his own responsibilities under the regulations and our own responsibilities under the compliance review. During a compliance review we would investigate what the contractor was doing through his corrective action plan, and we would also look to the identification of people who continue to suffer past effects of discrimination, in addition to the contractor affirmative action program. In those cases all employees would be identified.

Representative GRIFFITHS. In your statement, Mr. DeLury, you say that the Wage and Hour Division has found 142,597 employees to be underpaid and over \$65 million due in back wages. Did the employees get the money?

Mr. DeLury. I have with me also today Morag Simchak, who is my special assistant. Unfortunately Ben Robertson, the Acting Wage and Hour Administrator, is not here.

Representative GRIFFITHS. Would you give your name to the reporter, please?

Mrs. SIMCHAK. I am Morag Simchak, special assistant to Mr. DeLury.

The record shows to date, Mrs. Griffiths, that employees have recovered a little less than half the total amount found owing under wage-hour programs.

Representative GRIFFITHS. What record?

Mrs. SIMCHAK. The statistics show this.

Representative GRIFFITHS. Who gathers the statistics?

Mrs. SIMCHAK. They are gathered in the Department of Labor, in the Employment Standards Administration.

Representative GRIFFITHS. Do you have the names of the people and know positively whether or not the money has been paid? Do you do anything toward seeing to it that the employer pays?

Mrs. SIMCHAK. Oh, yes, indeed we do.

Representative GRIFFITHS. What do you do?

Mrs. SIMCHAK. The figure that was cited represents an estimate of the amounts found owing at the time the compliance officer is at an establishment making a check on compliance. This dollar figure is an overall figure; this \$65 million includes court activity and settlements as a result of litigation. But that figure is the result of estimates, because until recently this is the way information was compiled. Now that the method of compiling the statistics has been changed, we are able to have a more precise count of the amount that has been paid. Of course, we do not recover it all, sometimes as part of court decisions, for example, the full amount is not recovered.

Representative GRIFFITHS. How long did it take for you to recover half of it?

Mrs. SIMCHAK. This is since the effective date of the act.

Representative GRIFFITHS. What was the effective date?

Mrs. SIMCHAK. The effective date was June of 1964. And the data available is to the end of this past fiscal year.

Representative GRIFFITHS. Some of those people are dead.

Mrs. SIMCHAK. I don't know, ma'am.

Representative GRIFFITHS. From 1964 to now?

Mrs. SIMCHAK. This has been an increasing amount. I submitted for your records figures on a year-by-year basis.

Representative GRIFFITHS. Have you recovered everything that you found due in 1965?

Mrs. SIMCHAK. No; we recover on the average approximately 48 percent of what is estimated owing under the laws we enforce. In some cases the estimate has been an underestimate, in some cases it has been an overestimate. For example, in the *Wheaton Glass* case under the Equal Pay Act, which was one of the major Equal Pay Act cases to date, at the time of the investigation it was estimated that a quarter of a million dollars was due. But as a result of the litigation process—and years passed before there was a final decision—the final figure in that case was more than \$900,000. And it has been paid.

Representative GRIFFITHS. And it has all been paid?

Mrs. SIMCHAK. Yes. It has all been paid, with 6 percent interest.

Representative GRIFFITHS. What did you cover from 1966?

Mrs. SIMCHAK. I do not have the figure in front of me.

Mr. DeLURY. I have a figure here for 1966.

Representative GRIFFITHS. What is it?

Mr. DELURY. The number of employees owed was 6,633, in an amount of \$2,097,600.

Representative GRIFFITHS. Did you pay the whole \$2 million to the 6,000?

Mr. DELURY. I cannot answer that honestly.

Mrs. SIMCHAK. No.

Representative GRIFFITHS. You did not pay that?

Mrs. SIMCHAK. No.

Representative GRIFFITHS. 6,000 people were to have recovered money, is that it?

Mrs. SIMCHAK. Yes.

Representative GRIFFITHS. But \$2 million was due?

Mrs. SIMCHAK. Those were estimates, Mrs. Griffiths, at the time.

Representative GRIFFITHS. Whose business is it to collect the money, to see that the money is paid?

Mrs. SIMCHAK. The Department of Labor.

Representative GRIFFITHS. How are you going to go about collecting it? If you are only collecting 48 percent, that is really very poor. If I were one of the people to whom the money was due, I would want it.

Mr. DELURY. This is one of the questions I asked when I was briefed in this area. And they talk of finding large amounts of money due. And I asked the question, how much will the worker actually get in his or her pocket?

Representative GRIFFITHS. And how much did you find it would be?

Mr. DELURY. This 48 percent figure seems to prevail. Now, I am not too sure of why. I am looking into the operations as closely as I can. It may be that we need more people to do it.

Representative GRIFFITHS. It would be a great thought.

And another thing is that you do not need negotiators. Don't negotiate downward. If those employees have a right to the money there is no sense in negotiating anything, get the money.

Mr. DELURY. The way I look at it, Mrs. Griffiths, I could not in good conscience downgrade, nor do I think anybody in my position that has taken the oath of office that I have taken, could ever downgrade the rights of any worker.

Representative GRIFFITHS. Let me ask you? In recent years women have filed an increasing number of complaints under the Equal Pay Act. I have been told that in 1969 the Labor Department received complaints against 385 establishments, and that in fiscal year 1971 this number rose to 1,203. Has the Labor Department's allocation of resources for enforcing the Equal Pay Act kept pace with the increasing complaints?

Mr. DELURY. May I just carry the statistics, which are raw statistics, one step further. In 1972 the number of complaints went to 1,115, which tells me that they have gone down. If you are asking, are we able to keep up with the number of complaints, I cannot give you an honest answer on that either. I would like to supply it for the record.<sup>1</sup> And I will.

<sup>1</sup> See letter of response to Representative Griffiths, dated July 31, 1973, beginning on p. 108.

Representative GRIFFITHS. I want an exact answer. And I want to know why you do not keep track of it. Because this is money that should go to women. And I want to know why you are not collecting it. You ought to do it.

Mr. DeLURY. Would anyone else want to comment on it?

Mrs. SIMCHAK. Mrs. Griffiths, there are many occasions when, in handing down decisions, the courts come to a compromise on the amount of the money that is due, this is not simply an administrative matter. All this data includes the litigation activity too.

Representative GRIFFITHS. I understand that.

Mrs. SIMCHAK. The courts, however, are increasingly awarding 6 percent interest.

Mr. DeLURY. On the amounts that are found due. And we do have a statute of limitations, of course.

Representative GRIFFITHS. And unless you folks get the money collected the statutes are going to run out, so they won't get the money, they will never get the money. If the Department of Labor has any real concern over the rights of women, it seems to me that one of the great places to start would be to see to it that the Equal Pay for Equal Work Act is in force, and that the money which has been declared due women from past employment should be immediately paid.

Now, Mr. Brown, I do not think you are home free yet either.

Mr. BROWN. I do not think that either.

Representative GRIFFITHS. What are the comparable figures for title VII on equal pay for equal work? What are you doing?

Mr. BROWN. We have a joint responsibility with the Department of Labor in this area. Whenever there is a case involving violation of title VII which does in effect involve an equal pay aspect, we do in fact settle that along with the rest of the case. It is difficult for us to separate out, however, in our figures what portion was an equal pay for equal work violation as opposed to portion what is due directly to some discriminatory practice. I suppose the only direct occasion we have is that in the A.T. & T. case the backpay award there was the \$15 million that I have indicated to you. And in addition to that, we have equalized the pay of many of the women, and indeed some of the minorities, which would raise it by, as I have indicated, \$38 million now, that is the present figure per year, to bring the women who have been underpaid for so long up to where they should have been but for the violation.

Representative GRIFFITHS. What was the EEOC's complaint backlog at the close of fiscal 1973?

Mr. BROWN. Approximately 65,000 to 68,000 cases.

I should point out to you that the number of cases coming in has gone up at an alarming rate. Even though we have doubled and in some areas tripled the output of cases being closed and settled, the number of cases coming in still runs far ahead of the amount of work we are able to turn out. I think there are a number of reasons for this. One, of course, is very obvious, and that is the new amendment to the act which was passed last year, which gave us for the first time jurisdiction over State and local governments and educational institutions.

Representative GRIFFITHS. Which were the biggest offenders, no doubt.

Mr. BROWN. There is no question about that. We have a great deal of problems both with educational institutions and State and local governments.

The other interesting thing is that as we become more successful in settling cases and in going to court and getting court awards, as this publicity is sent out through the country, the number of charges filed increases directly.

Representative GRIFFITHS. So success is going to bring in many more complaints.

Mr. BROWN. And so it looks like it is going to be a pretty good period of time before we can see that tapering off. We have estimated what the incoming work load would be up to 1975, and we anticipate by that year receiving approximately 85,000 to 90,000 new charges in that year.

Representative GRIFFITHS. I am sure. And I am sure you need more staff right now.

Mr. BROWN. There is no doubt about that.

Representative GRIFFITHS. The EEOC has not instructed its staff that affirmative action plans arising from its negotiations with employees must conform to standards set forth in its sex discrimination guidelines. As a result, such plans in fact have not always conformed to these standards. For example, in EEOC's recent agreement with the American Telephone & Telegraph, A.T. & T. was not required to revise its benefit program to cover maternity as a temporary disability. Why not?

Mr. BROWN. That is very true. What we are trying to do in the A.T. & T. case was to work out that case as best we could. There were certain provisions that we could not agree on. And we felt that the overwhelming majority of the settlement was excellent. There were two areas which were left out of that particular settlement. One was the sex guidelines. And the company has disagreed with our interpretation of our sex guidelines, and is inclined at this point, I believe, to have these cases tested through the courts. And they are awaiting the court determinations. And of course we filed charges in court on that.

The other area of course is the area of testing. That also was outside the agreement. But there is a specific provision which says that under the affirmative action program which they have agreed to, and under the consent decree entered in the U.S. District Court for the Eastern District of Pennsylvania, they cannot use that as an excuse for not meeting the goals which have been established.

Representative GRIFFITHS. Mr. DeLury, Mr. Brown was very kind and gave us the figures on how many women are employed in high level staff positions with the EEOC. I would like to know that same thing from you. Of the professional and secretarial staff members employed in the Washington and regional office of OFCC, how many are women?

Mr. DELURY. I cannot answer that question.

Mr. TRAVERS. I do not have the figures with me. We can provide those.<sup>1</sup>

Representative GRIFFITHS. I will tell you what you are going to provide. Of the 34 professional staff members in the Washington office, only 5 are female. Of the 24 professional staff members in the OFCC

<sup>1</sup> See letter of response to Representative Griffiths, dated July 31, 1973, beginning on p. 108.

regional offices, none are women. The 25 clerical support employees in the Washington office and the 9 clerical support employees in the regional offices are all women. Mr. DeLury, do you feel that you will be able to put some women in those offices in high-paying positions, at the policy level?

Mr. DeLury. Well, Mrs. Griffiths, this was one of the first questions I asked on speaking to George Henry, the Equal Opportunity man in the ESA. I asked him for a breakdown at that time. We still are trying to get the breakdown. And as soon as we can get it, we will get it over to you and see if indeed it does match with what you just read off.<sup>1</sup>

Myself, since I have been on board, I have been fortunate enough to find a good director for the black lung program which we started to administer for coal miners on July 1. The Director of that program is a female—it is a GS-16 job—Nancy Snyder.

Representative GRIFFITHS. Your maternity guidelines in the Department of Labor do not comply with the EEOC guidelines. Why not?

Mr. DeLury. That is a good question. Would anybody like to answer it?

Mr. Travers. We are now reviewing our own sex discrimination guidelines in the light of the fact that they are now inconsistent with those of EEOC. One of the serious questions that has arisen about our proposed revisions to the guidelines is that unlike the EEOC guidelines, our regulations would be a legal order to Government contractors. Many of the employers are now waiting on pending suits over the guidelines to settle the questions. So that a legal question has been raised about whether or not we should order Government contractors to conform to the EEOC guidelines, knowing that there are legal questions being raised.

Representative GRIFFITHS. I want to thank all of you for being here. And I would like to tell you that first the Department of Labor has not really done very much where women are concerned. I think they should do far more.

And I hope, Mr. Brown, that your total staff is expanded and that the next time you testify before this committee or any other committee you do not just refer to the telephone case, the A.T. & T., but you list maybe 400 or 500 other cases. And I hope that is within the next year or two, that you have real success in implementing the intent of Congress.

Mr. Brown. I certainly share your concern and hope.

Representative GRIFFITHS. The real truth is that 40 percent of the labor force is women. And they are being discriminated against. That is the reason why the welfare rolls have increased, almost exclusively. And the Department of Labor should forget about only taking care of men, and see to it that they take care of those who work. And all of us are working.

Mr. DeLury. Mrs. Griffiths, I would just like to state for the record my own feelings, that the next time I have the honor to appear here I hope to be able as an individual to supply much more meaningful information and better results.

<sup>1</sup> See letter of response to Representative Griffiths, dated July 31, 1973, beginning on p. 108.

Representative GRIFFITHS. Thank you very much.

Mr. DeLury. And I do view workers as workers, and female workers are just as important as male.

Representative GRIFFITHS. We have had Secretaries of Labor who referred to women as secondary workers.

Mr. DeLury. You will not hear that coming out of my mouth. I came from a very humble background and I saw my own mother discriminated against.

Representative GRIFFITHS. Thank you very much.

[The following letters were subsequently supplied for the record:]

U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 31, 1973.

HON. MARTHA W. GRIFFITHS,  
House of Representatives,  
Washington, D.C.

DEAR MRS. GRIFFITHS: On July 11, 1973, Assistant Secretary of Labor Bernard E. DeLury appeared before the Joint Economic Committee concerning the economic problems of women. At that time you asked him to supply information concerning employment by sex in the Office of Federal Contract Compliance, information on money budgeted for the Citizens' Advisory Council on the Status of Women, and information on resource requirements for the Employment Standards Administration.

Tables containing employment by sex in the Employment Standards Administration of which OFCC is a part and a statement on resource requirements of the Employment Standards Administration are enclosed.

With respect to the question concerning money budgeted for the Citizens' Advisory Council on the Status of Women the information is that for FY 1974 \$81,000 was requested for this purpose. Certain other incidental costs will be absorbed by the Women's Bureau.

I hope this information will be helpful. If there is anything further you need please do not hesitate to call me.

Sincerely,

BENJAMIN L. BROWN,  
Deputy Under Secretary for Legislative Affairs.

Enclosures.

EMPLOYMENT STANDARDS ADMINISTRATION

JUNE 30, 1973

Nationwide total ESA employees	2,390
Total male employees (59.9 percent)	1,431
Total female employees (40.1 percent)	959
Total minority employees (29.1 percent)	696
Total minority female employees (18.5 percent)	444

ESA NATIONWIDE PROFESSIONAL EMPLOYMENT—JUNE 30, 1973

Grade	Total employees	Total males	Percent	Total females	Percent	Total minorities	Percent	Total minority females	Percent
GS 16-18	10	7	70.0	3	30.0	3	30.0	2	20
GS 13-15	430	378	87.9	52	12.0	60	13.9	10	.02
GS 10-12	941	846	89.9	95	10.0	138	14.6	25	.02
GS 7-9	175	84	48.0	91	52.0	72	41.1	48	27.4
GS 4-6	27	14	51.8	13	48.2	10	37.0	5	18.5
Total	1,583	1,329	84.0	254	16.2	282	17.8	90	5.6

ESA NATIONWIDE NONPROFESSIONAL EMPLOYMENT—JUNE 30, 1973

GS 9-11	12	2	16.6	10	83.3	6	50.0	5	41.6
GS 5-8	533	49	9.1	484	90.8	250	46.9	225	42.2
GS 1-4	263	15	19.3	212	80.6	158	60.0	124	47.1
Total	808	102	12.6	706	87.4	414	51.2	354	43.8

STATEMENT OF RESOURCE REQUIREMENTS OF THE EMPLOYMENT STANDARDS  
ADMINISTRATION

Beginning with the enactment of the Equal Pay Act in 1963, followed by enactments of the Service Contract Act, the FLSA amendments of 1966, the Age Discrimination in Employment Act, the Garnishment law, and subsequent amendments to the Service Contract Act and Davis-Bacon Act, the workload has been increased substantially. There have been improvements and innovations in administrative and enforcement techniques that have substituted for the lack of increased resources to a certain extent. However, I believe that we must have additional resources if we are to adequately enforce and administer these laws. A backlog of complaints has developed in a number of areas.

---

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
Washington, D.C., August 2, 1973.

HON. BERNARD E. DELURY,  
*Assistant Secretary for Employment Standards,  
Department of Labor,  
Washington, D.C.*

DEAR MR. DELURY: The Committee would appreciate your response to the following questions to be placed in the record of the July 1, 1973, hearing on economic problems of women:

(1) In our discussion of the Equal Pay Act, the Labor Department noted that on the average only 48 percent of the back pay estimated to be due by the Wage and Hours Division under provisions of the Fair Labor Standards Act is ever awarded to complainants or employees. Since you testified, it has come to my attention that this figure has been broken down according to the performance of the separate provisions of the Fair Labor Standards Act, of which the Equal Pay Act is one. Would you please provide the Committee with this breakdown. Also, I am concerned that the Department is not comparing relevant figures with respect to the cases which are finalized in the courts. Please break down the Equal Pay Act figures into two categories: informally negotiated awards and court settlements. The first category should reflect the ratio of actual awards to the amount estimated to be due by the Wage and Hour Division; the second category should reflect the ratio of actual awards to the court-mandated settlement. Please compile these data for the period June, 1964 through the end of Fiscal 1973.

(2) To implement Executive Order 11246, in January 1970 the Labor Department issued Order No. 4, requiring Federal contractors and subcontractors to set goals and timetables for providing equal employment opportunities for Blacks. Almost two years later, after considerable pressure from women's groups, the Labor Department issued Revised Order No. 4, which extended the provisions of the original order to women. How many employers' affirmative action plans have been reviewed with respect to opportunities for women? What checking is done to find out whether an employer is meeting the goals and timetables in his affirmative action plan? What action does the OFCC take to determine the validity of the reports? How many companies has the OFCC found not to be meeting their goals and timetables in providing equal employment opportunities for women? How many of these companies have lost their Federal contracts?

We would appreciate a reply to these questions at your earliest convenience so that the hearing record can be printed. Thank you.

Sincerely,

MARTHA W. GRIFFITHS,  
*Member of Congress.*

---

U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS,  
Washington, D.C., September 10, 1973.

HON. MARTHA W. GRIFFITHS,  
*House of Representatives,  
Washington, D.C.*

DEAR MRS. GRIFFITHS: This is in further reply to your letter of August 2, 1973, in which you asked for statistical data about the Department's record of enforcement under the Equal Pay Act of 1963, as well as a report of our activity under Executive Order 11246, as amended.

Before providing the following data, I am taking this opportunity to advise you that this detailed information was not available to me, or to my Assistant, Morag Simchak, at the time of the Joint Economic Committee hearing on July 11, 1973. All of the information contained in our records prior to July 11, 1973, had already been forwarded to the Committee staff on or before the hearing date.

Attached is the breakdown (Table A-1) which you requested detailing the monetary findings and recoveries for Fiscal Year 1973 under each of the laws enforced by the Wage Hour Division. 1973 is the first year that our statistics have been broken down according to recoveries for these various provisions, of which the Equal Pay Act is one. Prior to 1973, the only monetary statistics available on the Equal Pay Act show the number of employees underpaid and the back wages found due as a result of investigations completed each year. We understand that you have a copy of these figures.

As shown on Table A-1, in 1973 employers agreed to pay employees a total of \$4,626,251 under the equal pay provisions. This figure includes settlements which were negotiated by the field staff of the Wage Hour Division and those secured through the efforts of the Solicitor. Records kept in the Solicitor's Office indicate that, excluding the American Telephone and Telegraph settlement (in which approximately \$7.7 million was paid to employees), \$2,503,070 of the total for Fiscal Year 1973 was recovered through their efforts.

While the back wages found due by Wage Hour in each year represent activity completed that year, the figures showing the amount which was agreed to be paid cannot be related to activities completed during any one year because they also include payments resulting from litigation which started in a previous year and took more than one year to complete. In this situation, it is our practice to record the "back wages found due" when the case is accepted for further action by the Solicitor's Office, while the actual recording of these back wages as being paid is delayed until litigation is completed and a judgment or consent decree secured. Of course, some cases handled by the Solicitor are settled short of litigation. Table A-2 attached hereto summarizes the available data as to back wages recovered due to action by the Solicitor's Office.

As of August 13, 1973, 523 cases have been filed by the Solicitor's Office under the Equal Pay Act. 168 of these cases are still pending. We do not know what percentage of the back wages found due in 1973, or in previous years, is involved in such cases, but a number of these cases do involve very large sums of money. In addition, of course, the Solicitor's Office has accepted cases for further action which have not yet reached the litigation stage.

While important, we do not consider back wage recoveries to be a full measure of our success under the Equal Pay Act. Important legal precedents have been set and in most cases where violations have been disclosed, we have been able, either through negotiation or litigation, to obtain an agreement to raise the wage rates to underpaid employees.

With respect to the questions raised in paragraph two of your letter of August 2, 1973: All affirmative action plans reviewed after the effective date of Revised Order No. 4 were reviewed with respect to opportunities for women and other requirements of the Order. During Fiscal Year 1972 approximately 22,970 reviews were completed, and 39,300 reviews were targeted for Fiscal Year 1973. The main methods of determining whether or not a firm is meeting the goals and timetables set forth in its affirmative action plan, is by conducting a compliance review of the establishment, conducting revisit or follow-up reviews and by reports submitted by the contractors. The validity of the assertions in the affirmative action plan are confirmed through examination of pertinent records and interviews with employees. Order 14 on Standardized Compliance Review Procedures details the analysis required of the compliance officer.

During Fiscal Year 1972, 621 contractors were issued notices to show cause why sanctions should not be invoked. The notices involved various issues involved in the contract compliance regulations and were followed by attempts at conciliation. Four construction contractors have been declared ineligible for the award of any contract or subcontract financed in whole or in part by Federal funds since September, 1971. I might also mention that exact data on the number of passed over contractors is not known, as there is presently no requirement to report on this information. However, it is felt that the number of passed over contractors is large.

Again let me mention that the reporting requirements under Order 14 will be our main source of current data on the current utilization of minorities and women, on the goals and timetables established and on the enforcement posture of the compliance agencies but that these reporting requirements have not been

fully implemented. Secretary of Labor, Peter J. Brennan, Philip J. Davis, Director, Office of Federal Contract Compliance and I have sent a memorandum to the heads of compliance agencies restating the Order that these data be submitted to OFCC.

Sincerely,

BERNARD E. DELURY,  
Assistant Secretary.

Enclosures.

TABLE A1.—EMPLOYMENT STANDARDS ADMINISTRATION STATISTICS ON COMPLIANCE ACTIONS, JUNE 21, 1972 TO JUNE 20, 1973

Act	Monetary findings (total)		Benefits provided (agreed to be paid)	
	Employees	Amount	Employees	Amount
FLSA MW.....	150,984	\$21,182,674	95,872	\$9,593,056
FLSA OT.....	199,693	41,891,011	153,945	24,180,748
Government MW.....	6,537	1,121,083	5,791	738,897
Government OT.....	4,106	476,930	3,326	304,215
Equal pay.....	129,619	18,005,582	117,331	14,626,251
ADEA.....	1,031	1,866,226	304	662,324
Garnishment.....	115	22,930	99	20,046
Total (UNDUP).....	364,553	84,566,436	259,692	40,125,537

<sup>1</sup> Not included in these figures is approximately \$7,700,000 paid under the Equal Pay Act by American Telephone & Telegraph to approximately 3,000 of its employees. While the violative practice was originally disclosed by several wage-hour investigations, the resolution of the problem throughout the entire American Telephone & Telegraph operating system was secured through litigation by the Solicitor's Office but was not based on individual compliance actions. This amount is thus not included in wage-hour compliance action statistics.

TABLE A2.—BACK WAGES RECOVERED BY THE OFFICE OF THE SOLICITOR UNDER THE EQUAL PAY ACT

Fiscal year	Recovered by settlement	Recovered by litigation (including consent decrees)	Total
1971.....	\$340,678.99	\$1,386,806.91	\$1,727,485.90
1971.....	397,445.39	2,148,790.89	2,546,236.28
1973.....	517,645.40	1,9,685,425.36	110,203,070.76

<sup>1</sup> Included in these figures is approximately \$7,700,000 paid under the Equal Pay Act by American Telephone & Telegraph Co. to approximately 3,000 of its employees.

Representative GRIFFITHS. It is a pleasure to welcome Mrs. Koontz, Miss Hernandez, and Mrs. Sandler to the committee this morning. These women have played a significant role in the cause of women's rights for many years.

Mrs. Koontz, head of the Women's Bureau from 1969 to March 1973, was the most visible and active woman ever to hold the post.

Aileen Hernandez is the past president of the National Organization for Women, and a former member of the EEOC. Bernice Sandler is director of the Project on the Status and Education of Women of the Association of American Colleges. She was formerly head of the Action Committee of the Women's Equity Action League, and got more action than anybody ever had before.

We look forward to receiving this testimony this morning from three women so eminently qualified to discuss the Federal Government's enforcement of civil rights for women.

In the interest of saving time for questions, could you limit your oral statements to about 10 minutes each.

Thank you very much.

Mrs. Koontz, will you please begin.

STATEMENT OF ELIZABETH DUNCAN KOONTZ, FORMER DIRECTOR,  
WOMEN'S BUREAU, DEPARTMENT OF LABOR

Mrs. KOONTZ. Mrs. Griffiths, I appreciate very much your giving me the opportunity to appear before you in these historic hearings on the economic problems of women. I shall speak generally to Federal efforts to provide equal employment opportunities for women, with more specific reference to the Department of which I have the greatest knowledge.

You will notice as I continue that I have measured progress against the goals established in 1969 by the President's Task Force on Women's Rights and Responsibilities. The task force, at the direction of the President, prepared a most comprehensive set of goals for the Federal Government. You will be pleased that my review of progress indicates the legislative branch, with your leadership and that of the other Congresswomen, has been very responsive to the recommendations of the task force.

The following two recommendations of the task force, which have been reaffirmed and reinforced by the Citizens' Advisory Council on the Status of Women are very pertinent to our discussion:

The Executive Branch of the Federal Government should be as seriously concerned with sex discrimination as race discrimination and with women in poverty as men in poverty.<sup>1</sup>

The Secretary of Labor should establish priorities as sensitive to sex discrimination in manpower training programs and in referrals to training and employment.<sup>2</sup>

The task force also recommended that the President appoint more women to top positions concerned with the dynamics of policy development. Unless women who are well informed and aware participate in developing and administering major Federal programs, the Government cannot be sensitive to sex discrimination. Sex discrimination, like race discrimination, can be subtle as well as overt, unintentional as well as intentional. It is the unwitting institutionalized discrimination that causes the most damage. Responsible agency officials are frequently unaware that their practices are sexist.

I have in mind the appointment of women like Virginia Allan, who, in cooperation with the career women in State, has brought new awareness to top officials. Mere appointment of such women, however, is not enough. They must be brought into the mainstream of departmental decisionmaking and listened to; otherwise such appointments would be merely cosmetic.

The Civil Rights Commission, with long experience in identifying and publicizing racial discrimination, should be a major asset in focusing the spotlight of public attention on sexist practices in the Federal Government. The Civil Rights Commission has the opportunity to speak out on issues that have not been addressed by any other Government agency.

Attorney Frankie Freeman brings to the Commission an acute sensitivity to both race and sex discrimination, and her article "The ERA—What's in It for Black Women" shows great insight and under-

<sup>1</sup> *A Matter of Simple Justice*, the report of the President's Task Force on Women's Rights and Responsibilities, pp. 18 and 20, April 1970.

<sup>2</sup> *Women in 1972*, report of the Citizens' Advisory Council on the Status of Women, p. 77, April 1973.

standing of human rights and human dignity. More women are needed in top positions in the Civil Rights Commission to support and undergird her leadership.

Some basic data we need are yet not available although we have much from the Census Bureau and Bureau of Labor Statistics by race and sex. For example, when I served as a U.S. Delegate to the United Nations Commission on the Status of Women, the U.N. authorized that Commission to make a survey of member countries on how households are cared for. There was a limited amount of information available and it had not been collected systematically and was neither comprehensive nor reliable. Such information is sorely needed, since full utilization of human resources is so important to the economic development of developing countries.

Some of the data now collected are not collected or reported by sex and race. Here again, the President's Task Force has made a recommendation:

All agencies of the Federal Government that collect economic or social data about persons should collect, tabulate, and publish results by sex as well as race.<sup>1</sup>

A recent example of the failure to collect such data by race and sex is the survey by occupation announced by the Bureau of Labor Statistics in August 1971:

The new occupational employment statistics program is expected to (1) provide accurate profiles of the Nation's worker-skill resources by industry and trends in the numbers of workers employed by occupation; (2) identify States and metropolitan areas in which worker-skills are located; (3) permit National, State, and local projections of future worker-skill requirements by industry; and (4) identify emerging and disappearing occupations.

This type of data is very much needed by employers in order to develop affirmative action programs under Executive Order 11246, and the Women's Bureau recommended that this survey be made by sex and race.

Another problem with respect to data, is the definition of head of household and head of family. If there is a man in the family, even though he is disabled and supported by a wife or daughter, he is still the head of the family and head of the household. Thus, there is no accurate data as to the number of families in which women are the economic heads of the household or economic heads of families.

As a further example, in the following two studies reported in the March 1973 Monthly Labor Review, the data were not collected by sex or race: "Wages in Dress Manufacturing Vary Widely by Area," and "First Results of New BLS Survey of Occupational Injuries and Illnesses." Failure to include sex in the dress manufacturing survey obscures the fact that in this industry the men have the higher paying jobs and the women the lower paying, and I believe a growing number of these women are black and Puerto Rican. In the second article, failure to collect the data by sex obscures the fact that women have far fewer accidents than men<sup>2</sup> and hence cost employers less in workmen's compensation costs.

<sup>1</sup> *A Matter of Simple Justice*, the report of the President's Task Force on Women's Rights and Responsibilities, p. 24, April 1970.

<sup>2</sup> See Current Estimates From the Health Interview Survey—1971, Series 10, No. 79, Public Health Service, Department of Health, Education, and Welfare, tables 8, 10, 11, and 12.

The treatment of data that are collected by sex and race frequently indicates a lack of understanding of the importance of female unemployment, lack of skills, and low pay. As pointed out by the Task Force on Women's Rights and Responsibilities the cost of neglecting disadvantaged young women is high:

Without any question the growing number of families on Aid to Families with Dependent Children is related to the increase in unemployed young women. For many girls living in very poor or disorganized families, the inability to find a job means turning to prostitution or other crime—or having a child to get on welfare. Potential husbands do not earn enough to support an unemployed wife.

The stability of the low income family depends as much on training women for employment as it does on training men. Only through employment of both partners can such families move into the middle class.

And I might also add to that statement that the middle class in this country is middle class for the most part, because both male and female heads have been working. The task force further states:

The task force expects welfare rolls will continue to rise unless society takes more seriously the needs of disadvantaged girls and young women.<sup>1</sup>

The Small Business Administration is an example of an agency where there is a lack of balance and perspective that could be furnished by women in top policy positions. Minority women who are applying for loans to start or expand a business, particularly a service industry in a minority community, simply do not get the same kind of encouragement, consideration, or technical assistance that men are given. In many instances males who are considering loans and grants are unaware of the market for services to women in a minority community. For example, most men would not be able to evaluate properly the possibility for success of the proposed expansion of a beauty parlor to include a health spa in a low-income community—

Representative GRIFFITHS. We do not even have one in Congress.

Mrs. KOONTZ. I agree—yet the need for such a facility is recognized by physical fitness experts, physicians, and even employees and employers.

The military services have greatly expanded the opportunities and occupational choices for women in the past few years, but they still require women volunteers to be better qualified than men. The young women who could benefit most from the training, medical care, and wider associations of the military services are not eligible to enlist. The Citizens' Advisory Council on the Status of Women, at its last meeting adopted, recommendations that I heartily endorse:

The Citizens' Advisory Council on the Status of Women commends the military services on progress in the past few years in increasing the utilization of women in the military services and in eliminating discriminatory practices. The Council urges that the services move as rapidly as possible toward completely equal treatment and that the same standards for enlistment and commissioning be applied to both men and women. We recommend immediate action to permit the prompt induction of all women volunteers who meet the present very high standards.

The Citizens' Advisory Council on the Status of Women, finding that the career options of many young women are being limited by lack of knowledge of the splendid opportunities in the military services, urges professional educational organizations, women's organizations, and parent organizations to inform themselves about military life and opportunities for women. We suggest that high schools invite military women and members and former members of the

<sup>1</sup> *A Matter of Simple Justice*, the report of the President's Task Force on Women's Rights and Responsibilities, p. 21, April 1970.

Defense Advisory Committee on Women in the Services (DACOWITS) to career days and to provide other opportunities for their women students to gain enough knowledge that military service can be a real possibility for them. We recommend that the media provide an accurate picture of military women and opportunities for young women. We commend the Defense Advisory Committee on Women in the Services for their great service to young women in this respect and recommend increased support for their work.

Now, I would like to speak more specifically to some problems in the Labor Department. I have been away for several months so it is possible that there are some changes on the drawing board that I am not aware of. Although as Director of the Women's Bureau, I sat with top staff, it was still frustrating to be thwarted by the structure, which prohibited actually functioning directly on a level with Assistant Secretaries. The structure itself handicapped communication with Assistant Secretaries who had decisionmaking power over programs directly affecting women's employment, both in the Labor Department and outside. The structure was felt greatly at the regional level, where the outreach personnel was not directly responsible to the national office of the Bureau.

We in the Women's Bureau found, in our conferences with business and union representatives, that they were looking to the Federal Government for examples of good fair employment practices. When there are few women in policymaking positions in the Federal Government, the impression is left with business leaders that equal employment opportunity does not include opportunity at these levels and that the Federal Government is not serious about its pronouncement.

Lack of an effective Federal program makes it more difficult for the Labor Department and the Equal Employment Opportunity Commission to enforce laws and Executive orders governing the private sector. The Equal Employment Opportunity Commission, for example, finds it difficult to enforce its guidelines on leave for childbirth and complications of pregnancy when the Federal Government itself is not complying with these guidelines for its own employees. I am told that the General Electric Co., which is being sued in Federal district court to enforce compliance with the Equal Employment Opportunity Commission guidelines, has entered as evidence the recommendations published by the Civil Service Commission and the regulations of Federal agencies, which are not in compliance with EEOC guidelines.

I was particularly concerned while I was at the Labor Department with the lack of representation of women in the manpower training programs. Although over three-fifths of all the adults in poverty are women,<sup>1</sup> the manpower training programs have trained far more men than women.

The Job Corps is one example, and a particularly distressing one to me, of the lack of attention to needs of young women. Although women 16 to 20 years of age represented 45 percent of the unemployed youth in these age ranges in 1972, they represented only 25.9 percent of the enrollment in the Job Corps.<sup>2</sup> This was a slightly smaller percentage than they represented in 1968 in the Job Corps, when it was 28 percent. When one considers the greater opportunities afforded young men by the military services and the public schools, it would appear that the manpower training program should provide for a

<sup>1</sup> U.S. Department of Commerce, Bureau of the Census, p. 60, No. 81, table 5.

<sup>2</sup> Manpower Report of the President, March 1973, tables A-25 and F-8.

larger percentage of women than their representation among the unemployed.

If one looks at the work incentive program (WIN), the Manpower Administration program in which there is the highest percentage of female participation, 60.2 percent, one finds that 87 percent of the adults receiving aid to families with dependent children are women.<sup>1</sup>

The discrimination in the WIN program is established by law in section 433(a) of the Social Security Act Amendments of 1971 (Public Law 92-223). Earlier the preference for men was in Labor Department and Department of Health, Education, and Welfare regulations, which were challenged as contrary to the Social Security Act, Executive Order 11246, title VII of the Civil Rights Act of 1964, and the 14th amendment by two young women in Washington seeking to secure immediate training. The court on December 10, 1971, invalidated the Federal regulations holding they were in conflict with all the laws cited by the plaintiffs and the 14th amendment.<sup>2</sup> Shortly thereafter the Social Security Act was amended to specifically provide preference for men. Although such a preference in law is as contrary to the 14th amendment as preference in a regulation, the Federal agencies are giving preference to men.

The public employment program (Public Law 92-554) provides special consideration for unemployed and underemployed veterans who served after August 5, 1964. The National Organization for Women was convinced that the Secretary of Labor in the regulations adopted thereunder gave greater preference to veterans than the law provided and largely ignored the provision of law prohibiting discrimination because of sex (29 CFR 55.7(d)). In any event only 28.1 percent of persons hired under the public employment program in 1972 were women.

Although many of the manpower programs are carried out by contracts, the former Solicitor of Labor held that Executive Order 11246 applies only to manpower grants or contracts under which supplies or services are provided for the Government but is not applicable to agreements which provided for assistance to a third party (trainees under manpower training programs). After this opinion was issued, manpower training contracts did not include the equal employment opportunity clause required by Executive Order 11246. The Women's Bureau objected to this ruling to no avail. As far as I know it is still in effect, excluding most Labor Department contracts from the requirements of Executive Order 11246. Such contracts are, however, subject to title VI of the Civil Rights Act of 1964, which prohibits discrimination because of race, color, or national origin in "federally assisted programs." Thus the net effect of the Solicitor's ruling was to eliminate the prohibition against discrimination because of sex.

The "Dictionary of Occupational Titles," which defines and classifies by skill-complexity level all the major occupations, especially needs major revision. The dictionary was developed by the Labor Department many years ago and reflects the low regard during that period for women's skills. The job titles themselves are sexist, and I believe

<sup>1</sup> U.S. Department of Commerce, Bureau of the Census, p. 60, No. 81, table F-8.

<sup>2</sup> *Thornton et al. v. Richardson et al.*, 4 FED Cases 299, U.S.D.C., W.D. Washington, Dec. 10, 1971.

efforts are underway to change the titles. I am aware of your efforts, Mrs. Griffiths, to get the Census Bureau to eliminate sexist job titles.

However, the skill-complexity classifications, and possibly the system itself, need major revision. "Foster mother," for example, has the same skill-complexity classification as "restroom attendant" and "parking lot attendant." It has a lower skill-complexity classification than a newspaper delivery boy, a pet shop attendant, or dog trainer.

The Department of Labor has given a small grant to the Wisconsin Department of Industry, Labor, and Human Relations for review of the classifications of some traditionally female occupations, but this project is not the complete overhauling that would be required to revise all the titles, reevaluate and possibly revise the classification structure itself, and assign new nonsexist skill-complexity classifications.

The regulations of the Bureau of Apprenticeship and Training (29 CFR 6810) do not require that the affirmative action plans include goals and timetables for eliminating sex discrimination. The Women's Bureau and women's organizations have sought amendment of the regulations to apply to sex discrimination, but so far without success.

I am sure you are interested in some specific recommendations for correcting the problems outlined. While all of the problems could be corrected by changes in attitude, statutory requirements can bring about changes in behavior and result in faster change in attitudes.

I submit the following possibilities for your consideration:

The Congress could—

1. Require that Federal agencies, in collecting economic data about persons, collect, tabulate, and publish results by sex and race, and by marital status where relevant.
2. Make it clear when committees are hearing Federal officials that Members of Congress are concerned about sex discrimination in Federal employment and in all the programs administered by the Federal Government.
3. Provide adequate appropriations for those agencies enforcing nondiscrimination requirements and for those promoting equal opportunity, such as the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance and agency compliance units, the Civil Rights Commission, the Women's Bureau, and the Citizens' Advisory Council on the Status of Women. I mention the latter three because they have the capability of being advocates for interests and concerns and providing the two-way channel of communication directly with women from the grassroots level throughout the entire structure.
4. Require the military services to accept women under the same age and educational requirements as men and to expand their training facilities so that women could be enlisted immediately.
5. Prohibit discrimination because of sex in all manpower training programs administered or funded by the Federal Government.
6. Require the Bureau of Apprenticeship and Training to amend its regulations to apply the requirement for affirmative action plans to sex discrimination.

7. Require the Labor Department to revise the Dictionary of Occupational Titles to eliminate sexist titles and evaluations of jobs and require the Census Bureau to eliminate sexist titles.

I think there could be no question, Mrs. Griffiths, that the matter of funds and adequate staff are prohibitive factors in even alerting women to what the present laws permit them to enjoy. The Women's Bureau had enormous difficulty with its very tiny budget in trying to do what was expected of it by women in this country. And yet it is the only agency that generally uninformed women and informed women know about and look to for the assistance about their needs and concerns within other agencies of Government, in terms of what they are entitled to, what provisions are available, et cetera. And it seems perfectly ridiculous to me that any agency serving over half of the population should have such inadequate staff, and work without the regional resources which are in effect the outreach, the very arm, the very essence of effective action, as the Women's Bureau now does.

I want to stress again that discrimination can be subtle or overt, it can be knowledgeable or unwitting but no matter which, we cannot continue wittingly or unwittingly to deprive women of their due justice or to deprive society of the benefit of women's talents.

I thank you.

Representative GRIFFITHS. Thank you. You are like a clear fresh breeze. I enjoyed your statement.

Mrs. Sandler, will you please proceed.

**STATEMENT OF BERNICE SANDLER, DIRECTOR, PROJECT ON THE STATUS AND EDUCATION OF WOMEN, ASSOCIATION OF AMERICAN COLLEGES**

Mrs. SANDLER. I will talk primarily to Federal efforts to end discrimination, and particularly as they relate to education. But I want to say a few words about women in general.

Although women are the fastest growing sector of the work force, and most women will work 25 years or more regardless of marriage and children, our Government and society still act as though all women worked for a short time, then married, had children, and quit work. Yet half of the mothers of school-age children now work; indeed women with school-age children are more likely to work than wives without any children. One-third of all mothers of preschool-children now work, and still more would work if adequate child-care facilities were available. Women's place is supposedly in the home, but they are leaving it in droves to enter the marketplace. They do not work for little luxuries; they work because they need the money. They work because they are divorced and widowed; they work because they want a better life for themselves and their families; they work because they want their children to have a chance to go to college; they work to buy the food their children need to eat. For many families it is the wife's earnings that keep the family off the welfare rolls and out of dire poverty.

No one minds that these women work, as long as they work at low-paying jobs such as secretary, nurse, and waitress. But when women start asking for better jobs, then the cries are raised about the destruction of the family, juvenile delinquency, the joys of mother-

hood, and reverse discrimination. No one really wants their secretary to quit work and go back to the home. Our Nation has only just now begun to turn its attention to women, and to deal with the new facts of life: working women.

For example, until very recently, there were no laws covering discrimination against women faculty or students. Only Executive Order 11246, as amended, applied, and that only covered institutions with Federal contracts. One of the least noted achievements of the 92d Congress was a genuine legislative explosion concerning sex discrimination in education. Title VII of the Civil Rights Act was amended to cover all institutions, public or private, and regardless of whether or not they receive Federal assistance. Title IX of the Education Amendments of 1972 now protects all female students and employees in all federally assisted educational programs. The Equal Pay Act was amended to cover women faculty and other professional women, and in October 1971, the Congress extended the jurisdiction of the U.S. Commission on Civil Rights to cover sex discrimination.

Despite this congressional mandate, however, Federal agencies have lagged in translating the new legislation into effective policy and procedure. I would like to talk primarily today in my oral statement about the Department of HEW, Office for Civil Rights, I will preface that by saying that probably of all the compliance agencies they may very well have done the best job. And I would like to tell you what the best job looks like.

HEW has been criticized both by educational institutions and by women's groups for its lack of attention to the problem, its inefficiency and inconsistency.

For example, although the sex discrimination provisions of the Executive order went into effect in October 1968, HEW did not officially notify educational institutions of their responsibility until October 1972, a lapse of 4 years.

Currently, about 500 educational institutions have been charged with a pattern and practice of sex discrimination, and about 350 women have filed individual complaints against their institutions. Approximately one in five institutions of higher learning have been charged with discrimination. These complaints involve many of our finest institutions. I do not want to imply that academia is worse than the rest of society, for it is not. Sex discrimination is a pervasive problem almost everywhere. Our educational institutions, however, have been a more frequent target, partly because of their importance, and because they have held out the promise of equal opportunity.

Of the 500 pattern complaints, not one has been refuted in any of the subsequent investigations by HEW. It has been impossible to find out the exact number of reviews conducted as a result of these charges, for HEW apparently does not keep this data. It does not know the exact number of class complaints, nor the number currently under review, et cetera.

Although funds have been delayed on occasion by HEW, the delay has never been, to the best of my knowledge, for reasons of discrimination, but only because of lack of compliance, such as not having a written affirmative action plan, or not allowing HEW access to personnel data concerning employment. At no point have funds ever been terminated. In individual cases, where an institution has accepted

HEW's findings, the institution and the complainant negotiate a settlement between them. HEW, however, does not necessarily keep a record of what the specific nature and details of the settlement were.

In many instances HEW has not notified institutions when charges have been filed, despite promises to institutions and women's groups to do so. Since several years may elapse between the time of filing and the time of an investigation, much valuable time has been lost because institutions, unaware of charges, cannot use the intervening time to examine the status of women employees.

HEW investigations themselves have been the basis of criticism from all sides. Sometimes women employees have been asked to meet compliance officers in their motel rooms or in bars. Sometimes the investigations are conducted in absolute secrecy so that the charging party may not even know that HEW is on the campus.

Requests for data from institutions have often been inconsistent from one HEW region to another. HEW officers may request data and then the institution may not hear from HEW for a year or more, as to whether its data revealed discrimination or not.

Similarly, institutions have submitted affirmative action plans and then never heard from HEW as to whether or not the required plan is acceptable or not. Many institutions have delayed months and years in implementing their affirmative action plan, while waiting for HEW to respond.

HEW does not require all affirmative action plans to be submitted; HEW only asks for these plans when an actual review is scheduled.

To the best of my knowledge, not one of the class complaints has been fully resolved. Harvard, which was the first institution ever investigated by HEW, in the spring of 1970, and the University of Michigan, which was the first State institution to be investigated, also in the spring of 1970, have both had their affirmative action plans returned to them in June 1973 for further modification.

This long delay in investigation and conclusion not only contravenes Federal policy and denies women their rights, it even harms educational institutions themselves. Many of the women on the campus, disturbed and embittered by lack of HEW action have now taken their cases to courts under title VII. And many of these cases involve the possibility of millions of dollars of damages that would not have occurred had HEW handled the matter expeditiously and helped the institutions grapple with these problems.

For example, one institution promised HEW that it would give back pay to women employees in 1970. It has still not done so. And obviously these women will now be going into court.

Women's groups that have filed charges complain that they are not notified when an investigation is underway, what the findings were, or when the complaint is resolved. They also note that although there is a hearings procedure for institutions that disagree with HEW's findings, there is no appeal process for complainants.

The latest complaint that has come up is that of reverse discrimination, claims that because of HEW, preference is being given to women and minorities over better qualified white males. I should add here, as an aside, our project has not been able to locate one single instance where an unqualified woman was hired over a better qualified white male. Such preference is, of course, illegal; it violates the

executive order, title VII, and the 5th and 14th amendments. Quotas are illegal. In contrast, numerical goals have been upheld in case after case in the courts, and several of these have been denied certiorari when appealed to the U.S. Supreme Court.

Unfortunately, and perhaps tragically, some HEW personnel were unable to distinguish between quotas and goals, and they did not define for institutions which policies are legal and which are not. Subsequently a great deal of misinformation was generated, so that several complaints of reverse discrimination have now been filed with HEW.

HEW has responded in a very interesting manner. They have appointed an ombudsman to deal specifically with these cases of reverse discrimination on a high priority basis. In contrast, cases filed by women even several years ago still linger on unattended in the files. Women who have filed harassment charges receive far less protection from HEW than white males complaining of reverse discrimination.

I want to talk very briefly about title IX, which forbids sex discrimination against students and employees in federally assisted education programs. That act was passed June 1972. The proposed implementing regulations have not yet been issued. The last draft that I saw gave institutions no guidance as to what is permitted or prohibited. And I would strongly urge that this committee contact the Secretary of HEW urging that there be examples of prohibited and permitted activities in these regulations; otherwise institutions have no way of knowing what it is that they should or should not be doing.

Let me talk for one moment about Order No. 14, which Mr. DeLury referred to earlier. Under this order, corrective action is kept very secret. If an employer is in compliance, it would seem to me that there is no reason for his or her corrective action to be hidden and to be kept in secret files. That data cannot even be Xeroxed for Government files. And I wonder how the Government is ever going to evaluate whether an employer followed its corrective action plan or did not, if the Government is forbidden from having it in its files, and if Government employees are forbidden from even duplicating a copy of the plan. I would suggest that this is a clear contravention of the Freedom of Information Act. If an employer is not in compliance, obviously that employer will want to keep that corrective action secret.

In my prepared statement I have talked about other Government problems, and I will not go into those now.

I do want to say that better trained personnel are obviously needed, and training programs for personnel are essential. But that will not be enough. If women and minorities, including minority women, are ever to achieve equity in employment, a strong Federal civil rights enforcement effort and commitment is essential. It is clear that currently there is a great gap between Federal policy and Federal practice. The Congress has mandated equal employment opportunity. If the will of the Congress is indeed to be translated into Federal practice, Federal policy at all agencies—and at all agency levels—must now be reexamined to insure that women achieve full economic equality. And the time to begin is now.

Thank you.

[The prepared statement of Mrs. Sandler follows:]

## PREPARED STATEMENT OF BERNICE SANDLER

I am Dr. Bernice Sandler, Executive Associate and Director of the Project on the Status and Education of Women at the Association of American Colleges. Formerly, I was the Chairman of the Action Committee of the Women's Equity Action League (WEAL) which was instrumental in bringing about federal enforcement of Executive Order 11246 regarding sex discrimination in universities and colleges. I am a member of the Board of numerous women's organizations, including WEAL, and I am also a member of the Advisory Committee on the Economic Role of Women to the President's Council of Economic Advisers. I am also a former Visiting Lecturer at the University of Maryland, and a former Educational Specialist, working on women's rights, with the House of Representatives' Special Subcommittee on Education.

Although my testimony today will be limited to federal efforts to end discrimination, and particularly as they relate to education, I do want to say a few words about the role of women in general.

Although women are the fastest growing sector of the work force, and most women will work 25 years or more regardless of marriage and children, our government and society still act as though all women worked for a short time, then married, had children and quit work. Yet half of the mothers of school-age children now work; indeed women with school-age children are more likely to work than wives without any children. One-third of all mothers of pre-school children now work, and still more would work if adequate child-care facilities were available. Woman's place is in the home, but they are leaving it in droves to enter the market place. They do not work for little luxuries; they work because they need the money. They work because they are divorced and widowed; they work because they want a better life for themselves and their families; they work because they want their children to have a chance to go to college; they work to buy the food their children need to eat. For many families it is the wife's earnings that keep the family off the welfare rolls and out of dire poverty.

No one minds that these women work, as long as they work at low-paying jobs such as secretary, nurse, and waitress. But when women start asking for better jobs, *then* the cries are raised about the destruction of the family, juvenile delinquency, the joys of motherhood, and reverse discrimination. No one really wants their secretary to quit work and go back to the home. Our nation has only just now begun to turn its attention to women, and to deal with the new facts of life: working women.

For example, until very recently, there were no laws covering discrimination against women faculty or students. Only Executive Order 11246 as amended by 11375 covered universities and colleges, and it only applied to those with federal contracts. When Representative Edith Green documented sex discrimination in education during her extensive hearings in 1970, there was no federal legislation whatsoever covering women faculty or students.

One of the least noted achievements of the 92nd Congress, however, was the legislative "explosion" concerning sex discrimination in education. Title VII of the Civil Rights Act (which covers employment) previously excluded educational institutions; in March 1972 that exemption was removed with the passage of the Equal Employment Opportunity Act. *All* institutions, public or private and regardless of whether or not they receive federal assistance are now covered by Title VII. Similarly, Title IX of the Education Amendments of 1972 contains provisions protecting students and employees from discrimination on the basis of sex in all federally assisted education programs.<sup>1</sup> Title IX also removed the exemption for professional, executive and administrative employees contained in the Equal Pay Act of 1963, so that women faculty are now covered. Moreover, in October 1972 the Congress extended the jurisdiction of the U.S. Commission on Civil Rights to include sex discrimination. The Congress has clearly mandated a national policy to end sex discrimination in education. However, despite this mandate, federal agencies have lagged in transplanting the new legislation into effective federal policy and procedure.

<sup>1</sup> These provisions are similar to Title VI of the Civil Rights Act which forbids discrimination in all federally assisted programs on the basis of race, color and national origin. Title VI covers all federal programs; Title IX is limited to education programs only. Title VI only covers "beneficiaries" of such programs, e.g., students; Title IX covers beneficiaries *and* employees.

*The Executive Order and the Office for Civil Rights, Department of HEW*

The Office for Civil Rights (OCR) is the enforcement agency for Executive Order 11246. The basic policy, however, is determined by the Office of Federal Contract Compliance of the Department of Labor, with reviews and investigations conducted by HEW. The Executive Order requires institutions with contracts of \$50,000 or more, and 50 or more employees, to have a written affirmative action plan, including numerical goals. Institutions agree to follow these provisions when they accept a federal contract.

HEW has been criticized both by educational institutions and by women's groups for its lack of attention to the problem, its inefficiency and inconsistency. For example, although the sex discrimination provisions of the Executive Order went into effect in October 1968, HEW did not officially notify educational institutions of their responsibility until October 1972, a lapse of four years.

Currently, about 500 educational institutions have been charged with a pattern and practice of sex discrimination, and about 350 women have filed individual complaints against their institutions. Approximately one in five institutions of higher learning have been charged with discrimination. These complaints involve many of our finest institutions. I do not want to imply that academia is worse than the rest of society, for it is not. Sex discrimination is a pervasive problem almost everywhere. Our educational institutions, however, have been a more frequent target, partly because of their importance, and because they have held out the promise of equal opportunity.

Of the 500 pattern complaints, not one has been refuted in any of the subsequent investigations by HEW. It has been impossible to find out the exact number of reviews conducted as a result of these charges, for HEW apparently does not keep this data. It does not know the exact number of class complaints, nor the number currently under review, etc.

Although funds have been delayed on occasion by HEW, the delay has never been, to the best of my knowledge, for reasons of discrimination, but only because of lack of compliance in terms of such things as not having a written affirmative action plan, or not allowing HEW access to personnel data concerning employment. At no point have funds ever been terminated. In individual cases, where an institution has accepted HEW's findings, the institution and the complainant negotiate a settlement between them. HEW, however, does not necessarily keep a record of what the specific nature and details of the settlement were.

In many instances HEW has not notified institutions when charges have been filed, despite promises to institutions and women's groups to do so. Since several *years* may elapse between the time of filing and the time of an investigation, much valuable time has been lost because institutions, unaware of charges, cannot use the intervening time to examine the status of women employees.

HEW investigations themselves have been the basis of criticism from all sides. Sometimes women employees have been asked to meet compliance officers in their motel rooms or in bars. Sometimes the investigations are conducted in absolute secrecy so that the charging party may not even know that HEW is on the campus.

Requests for data from institutions have often been inconsistent from one HEW region to another. HEW officers may request data and then the institution may not hear from HEW for a year or more as to whether its data revealed discrimination or not.

Similarly, institutions have submitted affirmative action plans and then never heard from HEW as to whether or not the required plan is acceptable or not. Many institutions have delayed months and *years* in implementing their affirmative action plan, while waiting for HEW to respond. The Congress took note of this problem by adding Section 718 to the Equal Employment Opportunity Act of 1972, which states:

... an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

HEW has not yet notified educational institutions of this provision. Moreover, HEW does not require all affirmative action plans to be submitted; HEW only asks for these plans when an actual review is scheduled.<sup>2</sup> Institutions need

<sup>2</sup> Reviews are required before contracts of a million or more dollars are awarded, and may also be conducted when there is a charge or allegation of discrimination.

evaluation of their affirmative action plans in order to be in compliance and to make them less vulnerable to future charges.

To the best of my knowledge, not one of the class complaints has been fully resolved. Harvard, which was the first institution ever investigated by HEW, in the Spring of 1970, and the University of Michigan, which was the first state institution to be investigated, also in the Spring of 1970, have both had their affirmative action plans returned to them in June 1973 for further modification.

This long delay in investigation and conclusion not only contravenes federal policy and denies women their rights, it also harms institutions. Many women, discouraged and embittered by lack of HEW action, have now taken their cases to court under Title VII of the Civil Rights Act. Indeed a vast number of these cases have been filed against the very institutions that HEW had been investigating. Several of these court cases involve the possibility of millions of dollars of damages, damages that would not have occurred had HEW handled the matter expeditiously and helped the institution grapple with these problems, rather than leaving the institution and the women dangling for long periods of time. One institution which promised HEW that it would give back pay to women employees in 1970 has yet to do so. Because HEW has not yet settled this issue, the university may very likely be vulnerable for larger amounts in court suits. HEW's inaction is likely to push the women into court.

Women's groups that have filed charges complain that they are not notified when an investigation is underway, what the findings were, or when the complaint is resolved. They also note that although there is a hearings procedure for institutions that disagree with HEW's findings, there is no appeal process for complainants.

HEW does not make public any of these settlements (when it knows them) nor does it give any information about changes made by institutions. Thus institutions are often unaware of what HEW does and can require. For example, many institutions are debating whether or not HEW can or will require back pay. Yet HEW has already asked for back pay settlements, and our office recently learned of one woman who did not get back pay and attorney's fees as part of an HEW settlement, which took approximately three years to negotiate. Many institutions, as a result of complaints and review investigations have already given women salary increases. These "equity adjustments" total several million dollars.<sup>3</sup> Lack of publicity by HEW about positive actions that institutions have undertaken is unfortunate: it underestimates the actual work that HEW may have achieved; it gives institutions that have not changed the false impression that they do not have to worry about federal enforcement.

HEW has conflicting policies about release of data. For example, the letter of findings which details HEW's report of discrimination has been publicly released in some regions, and in other regions, it is guarded like a top secret document. Although the names of individuals and commercial information are protected from disclosure under the Freedom of Information Act, women's groups claim that the rest of the letter of findings should be made public.

One of the complaints that has come up recently is that of "reverse" discrimination, claims that because of HEW, preference is being given to women and minorities over better qualified white males. Such preference is of course illegal; it violates the Executive Order and Title VII, and would also violate the Fifth and Fourteenth Amendments. The confusion exists for many reasons, not the least of which has been HEW confusion over the difference between goals and quotas. Quotas are illegal; they are arbitrary and typically are an attempt to keep out an excluded class. In contrast, numerical goals have been upheld in innumerable court cases, and several of these have been denied *certiorari* when appealed to the U.S. Supreme Court. Goals are an attempt to estimate what the employer's work force would look like if there were no discrimination. They are *not* based on the population but on the number of available *qualified* persons. If the best qualified person is white and male, then that is who is hired. There is no intention to force institutions to hire lesser qualified women and minorities, including minority women.

What employers, including academic institutions, are required to do when they agree to accept a government contract, is essentially two-fold:

1. Make a genuine "good faith" effort to recruit women and minorities. (Good faith does *not* mean calling a white male colleague and asking if he knows a good man and then saying, "I'd be glad to hire a woman if I could have found one.")

<sup>3</sup> At one institution, two women received, for example, raises of \$10,000 and \$13,000.

2. *Utilize job-related criteria and apply the same criteria to men and women, whites and minorities.*

The obligation to meet the goal is not absolute; if the institution documents its efforts to recruit women and minorities (such as contacting women's and minority groups, individual female and minority scholars, open advertising, etc.), and if the institution can demonstrate that its hiring decisions were not subjective and were indeed job-related,<sup>4</sup> then nothing happens if the employer could not meet his goal.

Unfortunately, and perhaps tragically, some HEW personnel were not able to distinguish between goals and quotas, and did not define for institutions which policies were legal, and which were not. Subsequently, a great deal of misinformation was generated, so that numerous complaints of "reverse" discrimination have been filed with HEW. In response to this, HEW has appointed an "ombudsman" to deal specifically with these cases on a high-priority basis. In contrast, numerous individual women's cases filed before the extension of Title VII to cover educational institutions still linger, unattended to, in HEW files. Cases filed by women after the March 24, 1972 Amendments were shipped over to the Equal Employment Opportunity Commission for handling, where the backlog is enormous. White male cases are not sent to EEOC but receive special treatment and expeditious handling. HEW's response to this is that these white male cases involve institutions that already have affirmative action plans, and that this somehow distinguishes them from the individual women's cases, despite the fact that all institutions which have contracts must have affirmative action plans. Women who have filed harassment charges receive far less protection from HEW than white males complaining of reverse discrimination.

Similarly, when one women's group filed against several institutions for advertising for male faculty, it was told that they must produce an individual complainant; in contrast, charges by Jewish groups<sup>5</sup> about "reverse" discrimination have been handled without any requirement that the white male complainant be identified.

HEW is admittedly understaffed and underbudgeted. But problems of incompetence, unfairness, and lack of sensitivity to the problems of women and the problems of academic institutions cannot be excused by understaffing alone.

The Office of Education Task Force set up by then Commissioner Sidney Marland concluded in its official November 1972 report that effective implementation of civil rights policy as applied to women has yet to take place. The report, entitled "A Look at Women in Education: Issues and Answers for HEW", states:

OCR's work is absolutely critical to the effectiveness of any civil rights law applying to HEW programs . . . Clearly the impact of anti-sex discrimination laws will depend largely on how effectively OCR carries out its job. . . . So far, the record in enforcing equal treatment for women in employment under the Executive Order has been disappointing.

The U.S. Commission on Civil Rights made similar criticisms in its January 1973 report, "Federal Civil Rights Enforcement Effort: A Reassessment."

It is clear that the enforcement of the Executive Order by OCR has been far from adequate. Although there has been some progress, notably in the area of salary adjustments, generally progress has been spotty. Certainly there is far more recognition on the campus now than previously. Faculty and heads of departments, however, are too often unaware of their responsibilities. On some campuses, after a year or two of affirmative action, the number of women has actually decreased, while the number of men has increased.

#### *Title IX and the Office for Civil Rights, Department of HEW*

Title IX of the Education Amendments Act covers students and employees in all federally assisted education programs. That Act was passed by the Congress in June 1972. A year later, the proposed implementing regulations have not yet been released. Women's groups have not been consulted in the drafting of these regulations. Internal working drafts that have leaked out look woefully inadequate at this point: the regulations are broad and vague and give no examples or guidance as to what institutions might legally do or are prohibited from doing. For example, the issue of whether single-sex scholarships, single-sex honorary

<sup>4</sup> Marital status, for example, is not job-related criterion.

<sup>5</sup> As a Jewish woman, let me point out that these Jewish groups predominantly represent a small group of Jewish *males* and have generally shown little concern for Jewish women in academia. A new group, Jewish Women for Affirmative Action, supports numerical goals.

societies, single-sex social groups (such as fraternities and sororities) are allowed is simply not dealt with. The issue of discrimination against women in sports, an issue which is heating up very rapidly, is not even mentioned in the latest working draft that I have seen. Again, institutions which are willing to move forward will receive little guidance from the government and will be particularly vulnerable to charges from women's groups. I strongly urge that this committee contact the Secretary of HEW urging him that these matters be included in the proposed regulations, and that these regulations be expedited.

*The Executive Order and the Office of Federal Contract Compliance, Department of Labor*

Although HEW does the actual compliance reviews concerning academic institutions, the Office of Federal Contract Compliance sets the policy and guidelines for all federal enforcement concerning the Executive Order. Unfortunately, it has often not disseminated its policies adequately to the various designated Compliance Agencies, so that enforcement efforts have lagged, with many inconsistencies in enforcement. Many Compliance Agencies, such as the Department of Defense, have done virtually nothing as regards enforcement of sex discrimination provisions.

OFCC recently issued Order No. 14 which details procedures for compliance reviews. Women's groups and Compliance Agencies criticized the regulations for "protecting the contractor" and not the affected classes. These regulations were written with informal consultation with industrial representatives: academic institutions and women's groups were not consulted during the drafting process.

Women's groups have criticized Order No. 14 for its secrecy provisions: the Order prohibits government employees from duplicating certain compliance data, and forbids the government from retaining such data in its files; the data remains the sole property of the contractor. Corrective action plans, salary data, termination data, may not be kept in government files, thereby subverting the Freedom of Information Act. Moreover, the data are collected in such a way that actual numerical goals for the future cannot easily be determined, nor what happened the previous year, nor can the process of determining goals be evaluated. The procedures make it impossible for the reviewer to adequately evaluate contractor progress, and there is no way to evaluate whether or not women and minorities are being treated fairly.

OFCC personnel have sometimes been accused of lack of sensitivity and awareness of women's issues. Some staff simply do not see sex discrimination as "real" discrimination. Indeed, even minority women are often overlooked: data collection procedures often do not include a breakdown by race by sex (e.g. black men, black women), so that analysis of data separately by race, and separately by sex often obscures the status of minority females.

OFCC has almost completely ignored the problem of sex discrimination in the construction industry, despite the fact that the Census Bureau shows that there are women in these jobs: 10,978 women who are carpenters, 31,273 women who are riveters and flamecutters, and 9,571 women who are construction laborers.

*The Equal Pay Act and the Wage and Hour Division, Department of Labor*

The Equal Pay Act of 1963 now covers professional, executive and administrative positions, as of July 1, 1972. Generally enforcement has been good with blue-collar and lower paid white-collar workers. It is too early to assess their efforts with the newly covered professional workers, but there has been little activity in the last year. Personnel are generally well trained. The number of academic complaints is increasing rapidly and beginning to cause backlog and delays in investigation. Additional budget is essential if they are to give attention to the multitude of problems and extra work caused by the new jurisdiction. Unfortunately, this was the only compliance agency that did not receive any proposed increase this year although EEOC and OFCC Compliance Agencies did receive increases.

*Title VII and the Equal Employment Opportunity Commission*

It is somewhat early to evaluate EEOC's enforcement effort concerning the academic community, since EEOC has had jurisdiction only since March 24th, 1972. Generally EEOC personnel have been well trained and few complaints have been received in contrast to HEW and OFCC personnel. Several hundred charges against academic institutions have been filed. The backlog is extremely high; about 40,000 cases based on minority and sex discrimination are filed annually;

only about 15,000 cases are completed yearly. The new court enforcement powers ought to speed up the conciliation process considerably, but understaffing, will continue to be a problem for years.

EEOC personnel have met with academic groups concerning the new coverage but have not met with women's groups.

#### *Problems of Coordination*

EEOC's guidelines on sex discrimination are generally similar to OFCC's and those issued by the Wage and Hours Division. However, EEOC's guidelines on maternity leave and pension plans are stronger than those of the other agencies. For example, concerning fringe benefits the Wage and Hour Division and OFCC allow equal contributions *or* equal benefits. EEOC requires equal benefits regardless of the contribution. Thus, most institutions which have actuarially based plans are in violation of Title VII if they only comply with Wage and Hour guidelines or OFCC guidelines. It is not clear why federal contractors, almost all of whom are subject to Title VII, should have weaker guidelines to follow under contract compliance than those under Title VII.

Women are now filing charges simultaneously under Title VII, Title IX, the Equal Pay Act and the Executive Order. Institutions are being hit by three separate federal agencies, all of whom have different data collection procedures and policies. A unified data collection system is essential, and plans should be developed between the agencies to allow for coordinated investigations where appropriate.

#### *Department of Justice*

The Department of Justice has taken very few cases (less than ten) to court involving sex discrimination. They have the power to investigate all cases of pattern and practices in public and private employment. Although Justice has taken several states and cities to court concerning racial discrimination such as those involving firemen and policemen, they have generally not investigated sex discrimination in these cases, despite the fact that here too women can and do work at these jobs. (The U.S. Census Bureau notes that there are 1,976 women firemen who work at fire protection and 13,098 women who are policemen.)

The Department of Justice represents our government before the Supreme Court. In two cases, the Solicitor General chose to take a negative position involving women: he justified having differential benefits for dependents of men and women in the Services as well as supporting the automatic discharge of unmarried women in service who became pregnant. Despite our national policy to end sex discrimination, and despite this Administration's support of the Equal Rights Amendment, the Solicitor General chose to defend cases which violate the civil rights of women.

#### *Other Government Problems*

Although to some limited degree, the government has had programs to help minorities, many of these programs have been aimed primarily at minority males, even though the rate of unemployment among minority females is far higher than that of minority males.

For example, the Department of Labor's Bureau of Apprenticeship guidelines on affirmative action mention briefly that sex discrimination is prohibited, and then go on in great detail with instructions on how to have affirmative action for minorities. Such guidelines insure almost by definition that women, and particularly minority women, will be excluded in employer efforts in affirmative action.

Despite the recommendations of the President's Task Force on the Rights and Responsibilities of Women, and those of the Citizen's Advisory Council on the Status of Women, we do not have any major effort at the administrative level of the Federal Government to examine all areas of Federal policy for impact on women. HEW and its U.S. Office of Education are the only agencies that have evaluated and prepared substantial reports on what needs to be done to end discriminatory federal policies and practices in their own programs. Unfortunately there has been little action on the recommendations contained in those reports. Other departments also need to examine their own programs for unintentional but officially sanctioned biases. Equally important is the need for a highly placed, central Women's Office to evaluate women's issues and recommend changes in federal policy.

We need a federal policy to press for the rights of women in the work force, much as we have had one for minorities. Our society needs to deal with all kinds of discrimination simultaneously: no nation can ask any single group to "wait"

for its civil rights. Our laws give no group priority over the other. We need a concerted effort to deal with discrimination against women *and* minorities, including minority women. I would also hope that the Advisory Committee on the Economic Role of Women to the President's Council of Economic Advisers would be able to make extensive recommendations concerning women.

We will also need extensive child care and after school care. The problem is *not* whether women should work or do they *want* to work, but rather, with more and more women likely to work, how can we, as a nation, best utilize our resources to help them and the children of this country. Numerous studies show that the children<sup>6</sup> of working parents, when well cared for, are better adjusted psychologically, more socially mature and more independent than the children of non-working mothers. (Actually all women work; they just don't all get paid for it.)

If women and minorities, including minority women are ever to achieve equity in employment, a strong federal civil rights enforcement effort is essential. It is clear that there currently is a gap between federal policy and federal practice.

Better trained personnel are needed. Training programs for personnel are essential. But this will not be enough. All of these agencies are grossly understaffed, and many more dollars are needed if they are to fully do the job. The Congress has mandated equal employment opportunity. If the will of the Congress is indeed to be translated into federal practice, federal policy at all agency levels must now be reexamined, to ensure that women achieve full economic equality. The time to begin is now.

Representative GRIFFITHS. Thank you very much.  
Miss Hernandez, will you proceed, please.

**STATEMENT OF AILEEN C. HERNANDEZ, FORMER MEMBER,  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Miss HERNANDEZ. Like my sister at the table, I am very delighted to be here and see the honorable chairwoman in the seat, because we are not used to having a woman as "chairman."

I also find it unfortunate that the men are not present, because I feel that we are telling you something that you already know, and it might have done the other members of the Joint Economic Committee some good to have been here this morning.

I would like to talk briefly, if I may, because I would like to get to the question, and my prepared statement is available.

Representative GRIFFITHS. It will appear in full in the record.

Miss HERNANDEZ. Fine.

But I would like to suggest that there are some things that we would like to look at as people who are concerned about enforcement of any laws in this country. We talk very often about law and order in the society. And yet one of the laws which is most usually not obeyed is the law against discrimination.

And I find that we are just beginning to get into the area of discrimination against women. I personally cite this fact because I believe very strongly that there are very many economic indicators of the plight of women who work outside the home, and that we should also recognize that all women are poor vis-a-vis men, and that the minority woman is by far in the worst strait of all. Contrary to the great belief that black women or minority women are benefiting from the double benefits of being black and female, they are very definitely being doubly discriminated against by being black and female. When I was with the EEOC—and I do want to take a little bit of time to talk about

<sup>6</sup> Several research studies indicate that the critical factor in juvenile delinquency is *not* the mother, or whether or not she works, but the *father*, his absence or presence, and the nature of his relationship to the child.

that, because there is a change in attitude at the EEOC, one which I am delighted to see—when I accepted the position as the Commissioner of the EEOC in May of 1965, I found no humor in the frequently repeated statement that “sex” had found its way into title VII as a “fluke”—that it was a “joke”—that it did not need to be enforced—that the “real” discrimination in society was on the basis of race and ethnic origin and that’s where the emphasis of the Commission should be directed.

I also found, as I began to view the flood of complaints that came across my desk—in those days each Commissioner had an assigned caseload and the responsibility for evaluating those cases and determining whether or not discrimination had occurred—that there was a remarkable similarity in patterns of discrimination, that those who tended to discriminate on the basis of race or ethnic origin also tended to discriminate on the basis of sex, and vice versa.

I learned that there were “ghetto sex” jobs just as there were “ghetto race” jobs, and that very often minority women had the worst of all possible worlds—exclusion on the basis of race in jobs where white women gained access—clerical, sales, lower level educational positions—and exclusion on the basis of sex where minority men had begun to gain access—blue collar craft jobs, managerial training, law enforcement.

I learned to distrust aggregate figures which appeared to show heavy utilization of minorities and women and look for more refined statistics which usually showed overutilization of both women and minorities at lower levels and their virtual exclusion at upper levels of employment.

I learned the difference between a “job title” and the “real job,” as I found that men were called “administrative assistants” and paid at professional salary levels while women, doing exactly the same, or more complex work, were called secretaries and paid at much lower clerical salaries.

I saw the “conventional wisdom” about women permeate the work arena as complaint after complaint was filed by women who were told by prospective employers that they were not eligible for promotion because “State protective laws” prohibited their working overtime, or because they had previously been barred from job categories which were now “prerequisites” for the new level of employment; or women who were rejected for managerial training programs because “women leave to get married and it’s a waste to train them.” I saw black women turned down for employment because they had children born out of wedlock while white women were not even asked the question. I saw women, white and nonwhite, terminated for “indiscretions” while men, similarly indiscreet, gained stature in the eyes of their employers.

I saw woman after woman, desperately in need of work, victimized because she had children under her care. The *Phillips v. Martin Marietta* case in which a woman was refused a job because she had preschool-age children—a case in which I made an initial determination of discrimination—gained national attention when the Supreme Court of the United States suggested, somewhat reluctantly, that the employer had acted improperly. At the same time, I have seen few efforts on the part of Government, and virtually none on the part of private industry to provide for adequate child development centers. Blindly,

despite the fact of rising involvement of women in the work force and despite the fact that many men have sole support of their children and need access to such centers, Congress and the President continue to vacillate on providing quality child development centers for all who wish to use them. It is true that lack of such centers may disadvantage some male parents, but since the "conventional wisdom" declares that women must assume full responsibility for childrearing, failure to provide such child-centered facilities disadvantages virtually all female parents who work outside the home. The cost of private child care is prohibitive for many, and women who are dependent on child support payments—which more often than not never arrive—are in serious straits trying to juggle a job and home responsibilities. It is ironic to note that the only time the Government moved rapidly and effectively to address the real need for child care was during the Second World War when, overnight, a system of child care centers was developed to serve the needs of women workers in war industries. After the war, the centers almost totally disappeared, again almost overnight, as the pressures were put on women to leave their jobs—to returning vets—and resume housewifely duties. It is obvious that child care and development centers would provide a needed service for working parents, but they would also provide a whole new employment field for future job market participants—male and female.

While at EEOC, I also saw major corporations expend millions of dollars to hold on to sex-segregated job categories which could not, under any close, or even casual, scrutiny be termed worthy of the granting of a bona fide occupational qualification (BFOQ) exemption based on sex. The airlines, as a case in point, put the EEOC through two major public hearings and hundreds of complaints to enshrine the young, nubile, unmarried stewardess as a sex-segregated job category closed to men. From there it was only a short step to the advertising campaign, of questionable taste, exhorting airline passengers to "Fly Cheryl." The crowning insult, which I admit is a very personal reaction, came when underaged, exploited little "Eileen"—fortunately spelled with an E—announced her life's ambition was to have the world "Fly Eileen." The EEOC finally, and appropriately, denied the BFOQ, but the fight to eliminate sex discrimination in the airline industry is not yet over. Where are the women pilots? for that matter where are the minority male pilots? and women and minority male airline executives?

Another area in which the early attitudes of the EEOC proved disastrous was in the area of classified advertising in newspapers. Many newspapers, some of which had enviable reputations for excellence in journalism, seemed bent on casting doubt on their intellectual faculties when they persisted in obviously illegal "help wanted male" and "help wanted female" columns in their classified advertising sections. Hopefully, the recent Supreme Court decision in the *Pittsburgh* case has laid that absurdity to rest.

I raise these issues now because I believe it is important to see that, in 7 years, what the general public and most employers, public and private, originally viewed as a passing fancy of a few "women's libbers" has gained credibility. The majority of both the staff and the Commission, during my tenure on EEOC, has little or no commitment

to eliminating sex discrimination—we had an Executive Director who traveled around the country making poor jokes about Playboy Club bunnies. The Commission, in the years since I resigned in frustration, with 4 years of my term remaining, has made major, precedent-setting decisions which will have great impact on the lives of women—and men—who work outside the home.

And I have cited in my prepared statement a long chronicle of some of those decisions, and the impact these decisions have made in court cases which have come up recently and on State law.

And I believe that that new thrust of EEOC is extremely important, because it has meant some new approaches in areas that have not been touched at all.

But I would also want to make it very clear that it would be an error for me to leave this committee with the impression that the change in attitude and behavior of the EEOC has come about naturally. The fact is that the new responsiveness of EEOC can be traced almost directly to the founding and growth of the women's movement.

When I resigned in November of 1966, there was no strong feminist movement. The National Organization for Women (NOW) had been founded in late June of 1966 at a national conference of Commissions on the Status of Women; its organizing convention was not held until October 29-30, 1966, but the fledgling organization had spent a busy summer becoming a thorn in EEOC's side.

You have mentioned the Women's Equity Action League and federally employed women. And there have been some changes in the provisions of laws which now apply mandates against sex discrimination much more effectively than they had in the past. This committee has also heard about the Equal Pay Act and what has been happening there. But it is obvious also to me that the problems are not yet over; there is tremendous resistance to the whole question of equal opportunity. What I would like to do in the few minutes remaining is to talk about some specific recommendations that I think need to be made if we are going to make equal employment a major law enforcement area for this country.

I think probably the most crucial issue is, we have got to do something about overall employment in the country. It is very difficult to push for equal opportunities for women and minorities in an era when jobs are getting more and more scarce. So one of my recommendations talks to how we plan for the crucial area of economics—how do we get all these people who have been outside of the structure inside of the structure and still provide equity for all.

I make 10 recommendations, and I would like to just go quickly through them.

I do recommend measures for strengthening the powers and effectiveness of the Equal Employment Opportunity Commission. I think the Commission needs more support to initiate pattern and practice suits in the courts against discriminatory private employers, unions, employment agencies, and even more, against State and local governments, who are notoriously discriminatory against both women and minorities.

I think we need to eliminate the requirement that EEOC defer to State and local civil rights agencies, and substitute instead the oppor-

tunity for EEOC to enter into agreements with those local agencies who are willing to operate according to stringent Federal standards and regulations on equal opportunity.

I also believe very strongly that we have to provide for full public access to all the information on equal opportunity. That means total access to affirmative action complaints, EEOC statistical data on employers, unions and employment agencies, information on educational institutions and governmental units, conciliation agreements, et cetera, in order to make that information available to private groups that are going to have to be primarily responsible for the question of how equal employment is going to be enforced. I hold no brief for the Federal Government doing this job alone. I think without some strong activity on the outside by women's organizations who continue to grow in strength and who continue to grow in demands there will be very little done on equal opportunity within Federal Government or within private industry.

I think secondly we need to create, and adequately fund, an independent agency empowered to pursue equal employment opportunity within Federal Government. I think this would remove the present authority of the Civil Service Commission to oversee such activity. I have always somehow viewed the CSC involvement as giving a cat a plate of cream and suggesting that it guard it. I think they are too involved in the discrimination to be objective about doing away with it in Federal Government.

Third, I think we should substantially increase the Federal allocation to all agencies involved in equal employment, EEOC, the compliance sections of the Federal agencies, wage and hour division, and obviously the Women's Bureau, which has been under funded for many years.

Fourth, I think we need to provide legal assistance, free where necessary, and a system of administrative courts so that the complaints of employment discrimination can be handled quickly. The backlog on cases cited today in EEOC, and the wage and hour division, is a scandal. And obviously justice delayed is justice denied. So we need a much more efficient system of handling those cases at the court level.

Fifth, I think we need to substantially increase allocations for what I prefer to call "human power" training and establish strong incentives through special grants to ease reentry into the educational system for women, and to encourage training in "breakthrough" fields in new career opportunities.

Sixth, we need to require strong equal opportunity commitments and detailed affirmative action programs with goals and timetable for women and minorities as a condition for receiving Federal grants and contracts. These requirements should also apply—and I think this is essential—to all programs for which Federal revenue sharing moneys are used. After struggling so hard at the Federal level to get some attention to equal employment in federally funded programs it is disastrous now to turn it back to the State and local governments and say, do your own thing without guidelines.

Seventh, we should withdraw all Federal funds from communities, agencies, contractors, educational and health facilities, governmental units, et cetera which fail to implement equal opportunity regulations.

Eighth, we should enact legislation, with an appropriately high level of funding, which will create a system of high quality child development centers for all parents who wish to use them. Services should be provided free to those unable to pay and on a sliding scale for others.

Ninth, adopt a "humane labor standards act" which would provide all workers—male and female—with adequate wages, flexible hours of work, shorter work days and weeks, child care facilities, health, unemployment and disability benefits, pensions and other protections against exploitation.

And, finally, tenth, define new national priorities and redirect national resources toward creating full employment in a peacetime economy.

I am encouraged that Congress has begun to do a little of that work. Bunnie Sandler cited some of the things that happened in last session of Congress. But it is obvious that not enough has been done. I think that women are not going to go away, contrary to the early notion that the National Organization for Women was a passing fancy. And we have recognized that more and more women are organizing in order to get their rights in society. I am not surprised at all that we have had some dramatic changes, because I have always believed that if today's people understood what the women's movement was all about, that it was a sort of preliminary step of the way to a human revolution, that they would indeed get on board. And we find black women organizing, Spanish-speaking women organizing, native Americans, Asian women, and men, who are finally recognizing that by getting involved in the woman's movement that they can free themselves from some of the stereotypes that have disadvantaged them. And I think essentially what we who have been left out are asking is that the American economy make room for us, that it expand to include our needs and our desires. We are calling for an end to the white male gerontocracy. We believe, to paraphrase an old homily, that what is good for women and minorities is good for the country. Our Nation's success as a democracy will ultimately be judged by its ability to make the society inclusive rather than exclusive. It is time to take the necessary steps as we approach the 200th birthday of our Nation to cross the threshold into a new era of equal opportunity for all.

Again, thank you for the opportunity to appear.

[The prepared statement of Miss Hernandez follows:]

PREPARED STATEMENT OF AILEEN C. HERNANDEZ<sup>1</sup>

I greatly appreciated the invitation to appear before the Joint Economic Committee and assist in your examination of Federal efforts to provide equal employment opportunities for women.

The distinguished Chairwoman of today's hearing, the Honorable Martha Griffiths of Michigan, has been a leader in the battle to address the inequities in law and custom which have disadvantaged women in the society. Her courageous and skilled efforts to remove the Equal Rights Amendment from a committee which had consistently blocked its serious consideration by Congress are well known. I am sure that those who write the record of the Equal Rights Amendments'

<sup>1</sup> Miss Hernandez is an urban affairs consultant in San Francisco and Western Representative of the National Committee Against Discrimination in Housing. Miss Hernandez was a member of the U.S. Equal Employment Opportunity Commission from May 1965 to November 1966. She is also a former national president of the National Organization for Women.

progress to successful passage and ratification—and I am convinced that it *will* be ratified—must credit the talented Congresswoman with a major role.

These hearings are a logical extension of the fight to achieve equity for women in the society. In spite of the fact that the government's own statistics have noted a steady increase in the number of women who work outside the home, part-time or fulltime, the economic plight of women has occupied little of the attention of economists. (Perhaps that can be attributed to the fact that so few women are economists. I am delighted to note the presence of Ms. Lucy Falcone as a staff economist to this committee, and the fact that Marina Whitman is a member of the Council of Economic Advisers. These able women may be the *avant garde* "tokens" of what will become a trend in our national utilization of the many skills and talents of women).

#### THE ECONOMIC STATUS OF WOMEN

The United States Department of Labor has noted the following pattern to the work-force participation of women:

TABLE I.—WOMEN IN THE WORK FORCE

Year	Number (in millions)	Percent of all workers	Percent of all women 16 and over
1950.....	18.4	30	34
1960.....	23.2	33	38
1964.....	25.4	34	39
1968.....	29.2	37	42
1972.....	33.0	38	44

Source: U.S. Department of Labor, Bureau of Labor Statistics.

The disturbing reality, however, is that as women are entering the workforce in increasing numbers, the income gap between male and female workers is also increasing.

In 1955, the median earnings of women workers were 63.9% of the median earnings of men.

In 1970, the median earnings of women were 59.4% men's earnings.

Nearly  $\frac{3}{4}$  (73.9%) of all women, in 1970, earned less than \$7,000 per year, as compared to 30% of men workers.

In 1970, only 1.1% of women workers earned over \$15,000 annually; 13.5% of the men workers are found in this top bracket.

Figures also show that families headed by women are disproportionately poor: 1 in 9 families is headed by a woman, but 2 of every 5 *poor* families have women heads of household

3 of 10 Black families are headed by women, but 3 of every 5 *poor* Black families have women heads of household.

Black women, contrary to the popular myth that they doubly benefit by equal employment opportunity programs, still remain at the very bottom of the economic heap.

The distressing economic inequality of women cannot be explained away by any difference in level of education between men and women; both men and women workers have completed a median of 12.4 years of schooling. And the startling statistic is that women with five or more years of college education have a median income of only \$14 more than men high school graduates.

TABLE II.—MEDIAN INCOME IN 1970 OF FULL-TIME, YEAR-ROUND WORKERS, BY SEX AND YEARS OF SCHOOL COMPLETED, PERSONS 25 YEARS OF AGE OR OVER

Years of school completed	Median income		Women's median as percent of men's income
	Women	Men	
Elementary school:			
Less than 8 years.....	\$3,798	\$6,043	62.8
8 years.....	4,181	7,535	55.5
High school:			
1 to 3 years.....	4,655	8,514	54.7
4 years.....	5,580	9,567	58.3
College:			
1 to 3 years.....	6,604	11,183	59.1
4 years.....	8,156	13,264	61.5
5 years or more.....	9,581	14,747	65.0

Source: U.S. Department of Commerce, Bureau of Census, Current Population Reports, p. 60, No. 80.

What comes through clearly in these statistics is that women are underutilized, underpaid and segregated in the workforce. It is true that there are still many cases to demonstrate that women do not always receive equal pay for identical work, but the low scales of women can also be attributed to the fact that they are disproportionately found in low-salaried categories of work—or put somewhat differently, what women do apparently has little economic worth in the society.

Women are 76% of all clerical workers, but only 4% of “craftsmen and foremen”.

Household workers—nearly all of whom are women—had a full-time, year-around median wage of \$1,981 in 1971.

In fact, in *no* general work category—including clerical—do women's median wages exceed those of men.

TABLE III.—MEDIAN WAGE OR SALARY INCOME OF FULL-TIME, YEAR-ROUND WORKERS BY SEX AND SELECTED MAJOR OCCUPATION GROUP, 1970

Major occupation group	Median wage or salary income		Women's median wage as percent of men's
	Women	Men	
Professional and technical workers.....	\$7,878	\$11,806	66.7
Nonfarm managers, officials and proprietors.....	6,834	12,117	56.4
Clerical workers.....	5,551	8,617	64.4
Sales workers.....	4,188	9,790	42.8
Operatives.....	4,510	7,623	59.2
Service workers, except private household.....	3,953	6,955	56.8

Source: U.S. Department of Commerce, Bureau of the Census, Current Population Reports, p. 60, No. 80.

I cite these figures as examples only; there are many more economic indicators of the plight of women who work outside the home which would also reinforce the fact that while *all* women are poor vis a vis men, the minority woman is by far in the worst economic plight. Therefore, in my mind, it is essential that any program to alleviate inequity in employment opportunities must be directed with equal emphasis at racial and ethnic discrimination as well as at sex discrimination.

## EARLY EXPERIENCE WITH EEOC

It was with this thesis in mind, that I accepted the position as a Commissioner on the Equal Employment Opportunity Commission in May of 1965, when President Lyndon Johnson made his initial appointments to launch Title VII of the Civil Rights Act of 1964. I found no humor in the frequently repeated statement that "sex" had found its way into Title VII as a "fluke"—that it was a "joke"—that it did not need to be enforced—that the "real" discrimination in society was on the basis of race and ethnic origin and *that's* where the emphasis of the Commission should be directed.

I also found, as I began to view the flood of complaints that came across my desk (in those days each Commissioner had an assigned caseload and the responsibility for evaluating those cases and determining whether or not discrimination had occurred), that there was a remarkable similarity in patterns of discrimination—that those who tended to discriminate on the basis of race or ethnic origin also tended to discriminate on the basis of sex—and vice versa.

I learned that there were "ghetto sex" jobs just as there were "ghetto race" jobs, and that very often minority women had the *worst* of all possible worlds—exclusion on the basis of race in jobs where white women gained access (clerical, sales, lower level educational positions) and exclusion on the basis of sex where minority men had begun to gain access (blue collar craft jobs, Managerial training, law enforcement).

I learned to distrust aggregate figures which appeared to show heavy utilization of minorities and women and look for more refined statistics which usually showed overutilization of both women and minorities at lower levels and their virtual exclusion at upper levels of employment.

I learned the difference between a "job title" and the "real job," as I found that men were called "administrative assistants" and paid at professional salary levels while women, doing exactly the same—or more complex—work, were called "secretaries" and paid at much lower clerical salaries.

I saw the "conventional wisdom" about women permeate the work arena as complaint after complaint was filed by women who were told by prospective employers that they were not eligible for promotion because "state protective laws" prohibited their working overtime, or because they had previously been barred from job categories which were now "prerequisites" for the new level of employment; or women who were rejected for managerial training programs because "women leave to get married and it's a waste to train them." I saw Black women turned down for employment because they had children born out of wedlock while white women were not even asked the question. I saw women (white and non-white) terminated for "indiscretions" while men—similarly indiscreet—gained stature in the eyes of their employers.

I saw woman after woman, desperately in need of work, victimized because she had children under her care. The *Phillips v. Martin Marietta* case in which a woman was refused a job because she had pre-school age children (a case in which I made an initial determination of discrimination) gained national attention when the Supreme Court of the United States suggested (somewhat reluctantly) that the employer had acted improperly. At the same time I have seen few efforts on the part of government, and virtually none on the part of private industry to provide for adequate child development centers. Blindly, despite the *fact* of rising involvement of women in the workforce and despite the *fact* that many men have sole support of their children and need access to such centers, Congress and the President continue to vacillate on providing quality child development centers for all who wish to use them. It is true that lack of such centers may disadvantage some male parents, but since the "conventional wisdom" declares that women must assume full responsibility for child-rearing, failure to provide such child-centered facilities disadvantages virtually all female parents who work outside the home. The cost of private child care is prohibitive for many, and women who are dependent on child support payments—which more often than not never arrive—are in serious straits trying to juggle a job and home responsibilities. It is ironic to note that the only time the government moved rapidly and effectively to address the real need for child care was during the Second World War when, overnight, a system of child care centers was developed to serve the needs of women workers in war industries. After the war, the centers almost totally disappeared—again almost overnight—as the pressures were put on women to leave their jobs (to returning vets) and resume housewifely duties. It is obvious that child care and development centers would provide a needed service for working parents, but they would also pro-

vide a whole new employment field for future job market participants—male and female.

While at EEOC, I also saw major corporations expend millions of dollars to hold on to sex-segregated job categories which could not, under any close—or even casual—scrutiny be termed worthy of the granting of a bona fide occupational qualification (BFOQ) exemption based on sex. The airlines, as a case in point, put the EEOC through two major public hearings and hundreds of complaints to enshrine the young, nubile, unmarried stewardess as a sex-segregated job category closed to men. From there it was only a short step to the advertising campaign—of questionable taste—exhorting airline passengers to “Fly Cheryl.” (The crowning insult, which I admit is a very personal reaction, came when underaged, exploited little “Eileen”—fortunately spelled with an “E”—announced her life’s ambition was to have the world “Fly Eileen.”) The EEOC finally, and appropriately, denied the BFOQ, but the fight to eliminate sex discrimination in the airline industry is not yet over. Where are the women pilots—for that matter where are the minority male pilots—and women and minority male airline executives?

Another area in which the early attitudes of the EEOC proved disastrous was in the area of classified advertising in newspapers. Many newspapers, some of which had enviable reputations for excellence in journalism, seemed bent on casting doubt on their intellectual faculties when they persisted in obviously illegal “help wanted male” and “help wanted female” columns in their classified advertising sections. Hopefully, the recent Supreme Court decision in the Pittsburgh case has laid that absurdity to rest.

#### PROGRESS FOR EEOC

I raise these issues now because I believe it is important to see that, in seven years, what the general public and most employers—public and private—originally viewed as a passing fancy of a few “women’s libbers” has gained credibility. The majority of both the staff and the Commission, during my tenure on EEOC, had little or no commitment to eliminating sex discrimination (we had an Executive Director who traveled around the country making poor jokes about Playboy Club bunnies). The Commission, in the years since I resigned in frustration (with four years of my term remaining) has made major, precedent-setting decisions which will have great impact on the lives of women—and men—who work outside the home. The following are a few examples of such decisions: (extracted from the Commerce Clearing House, 1972)

The denial of promotion to a female employee, because she lacked experience in electricity and motors that could have been gained only in a lower job to which she was unlawfully barred under an invalid state law limiting her hours of employment, amounted to a continuance of the sex discrimination and was unlawful, where the creditable evidence indicated that the differences in her background and that of males assigned to such work was not so great as to constitute an overriding business justification.

An employer’s refusal to credit a female employee for time spent on maternity leave in computing her seniority amount to unlawful discrimination on account of sex, even though the leave was taken prior to the effective date of the Act. Failure to bridge the employees’ seniority perpetuated the effects of past discrimination, and there was no overriding legitimate business need served by the denial of seniority credits.

An employer and a labor union engaged in unlawful employment practices by maintaining separate seniority lists for male stewards, who were originally all domiciled in Hawaii, and for female stewardesses, who were all domiciled in mainland United States. Such seniority grouping were segregated because of sex and national origin, and preserved the effects of past steward-stewardess segregation with respect to present and future promotion, layoff, recall and other employment opportunities and thereby discriminated against both classes on the basis of sex.

An employer is viewed as having engaged in unlawful discrimination against female employees because of their sex when the requirements of a job to which female employees have sought promotion were changed to add duties that involved very heavy lifting. Considering that for biological reasons and cultural reasons significantly fewer females than males were capable of handling objects of great weight, the change in job content had the effect of limiting the employment opportunities of significantly

more females than males and amounted to unlawful sex discrimination in the absence of a showing that the change was necessary to the safe and efficient operation of the employer's business.

An employer engaged in unlawful sex discrimination against female applicants as truck drivers by requiring that they be married and that their husbands also be employed as truck drivers in order that they operate as teams of two on long haul runs, while maintaining a policy of hiring single males as truck drivers.

An employee's quitting of her employment after being told by a foreman that he wanted her to stay only if she stopped "pestering for equal rights" amounted to an unlawful constructive discharge, since the employee was left with the impression that she had either to forego her protected rights to oppose discrimination or to forego her employment.

An employer's refusal to hire females as a class and to recall former female employees for work at production jobs amounted to unlawful discrimination on account of sex, and the use of a few females in such jobs as a sampling of their ability to perform the work that involved weight lifting was insufficient to establish that the male sex was a bona fide occupational qualification. Where a much higher percentage of females than males are unable to do work in question, the employer is under an obligation to redistribute those job duties, such as heavy lifting, in order that a disproportionate number of females are not disqualified.

An employer engaged in unlawful discrimination on account of race and sex by selecting two "colored women", who had been employed as machine operators, to perform housecleaning work in the employer's office and at his home when no Caucasian employee was ever assigned to such work. He also engaged in unlawful retaliation against the two for opposing such unlawful practices by discharging them for refusing to do housework in the employer's home.

A labor union's failure to enforce terms of a bargaining contract which called for promotion of regular part-time employees to full-time positions on the basis of ability and practicability and its acquiescence in the contracting employer's refusal to promote part-time female employees amounted to unlawful discrimination on the part of the union.

In view of the facts that there were no females on an employer's traveling sales staff and that a female applicant had more experience than the male selected for a position, it was reasonable to conclude that the employer's rejection of the female applicant because of her family responsibilities was based on a stereotyped view of the family responsibilities of females and amounted to unlawful discrimination on account of sex.

Although an employer applied a minimum height rule to both male and female job applicants, application of the policy amounted to unlawful discrimination against female applicants on account of sex. On the basis of statistical evidence showing that 80 percent of females would not satisfy the height requirement while the average male's height would, the height rule had a disproportionate effect on females as a class, and the fact that a lesser height requirement would not guarantee that employees could be transferred to positions which required the minimum did not make the height policy a justifiable business necessity.

Although a female employee's work performance was admittedly poor, the discharge of such employee upon learning that she was having an affair with a male employee amounted to unlawful discrimination on account of sex, where the male employee was only "talked to" with respect to the matter. At least part of the reason that the female employee was disciplined more severely than the male was that she was a female.

An employer engaged in unlawful discrimination on the basis of sex in hiring and paying a male sales trainee at a salary higher than that paid to the female account executive who was required to train him and by refusing to promote females into the position for which the male was being trained and for which the female executive had superior qualifications.

There was reasonable cause to believe that a shipping company had engaged in illegal sex discrimination where a company official admitted that it was his policy to replace female employees who quit or retired with males. A belief that women should not work near docks did not establish sex as a bona fide occupational qualification which would justify the policy.

Many of the foregoing decisions, appropriately, go beyond a simple determination that obvious discrimination had occurred and sought to identify the subtleties of discriminatory behavior based on years of prejudice and stereotyping. Courts, too, are doing the same thing—utilizing and improving on the EEOC decisions to provide redress for persons subjected to discrimination. Among some of the recent Court decisions:

*N.O.W. v. Bank of California.*—A woman who claimed sex bias by the bank which employed her was permitted in court to represent all women employees of the bank throughout the bank's statewide operations. A federal court trial court rejected the bank's efforts to restrict the bias claims to the specific branches where the particular discrimination against the two complaining employees allegedly occurred.

*Kohn v. Royall, Koegel & Wells.*—In a suit by a female law student alleging sex discrimination against a law firm, the court found that she had standing and could represent the entire class of all women law students and women lawyers in New York City.

*Krause v. Sacramento Inn.*—A woman, claiming sex discrimination because she was refused a job as a result of a state law prohibiting female bartenders after the State Supreme Court had declared the law to be unconstitutional, appealed to the higher court. The Court of Appeals at San Francisco found a violation of Title VII, and the case has been remanded to the trial court for a determination as to monetary damages due to the estate of the now-deceased woman.

*Gillin v. Federal Paper Board.*—The employer unlawfully failed to consider a woman for a position as traffic manager. The court recognized she was not qualified for the particular opening because it included responsibilities outside her experience and she would have been rejected for that reason. However, that did not alter the fact that she was discriminatorily refused consideration because of her sex, not because she was unqualified. The Court found that a violation of Title VII had occurred.

*Meadows v. Ford.*—The court eliminated a minimum height requirement of 5'8" for plant jobs since the requirement was found to have a disproportionate impact on employees who were female and female applicants, and it was not a necessary requirement for job performance.

*Jurinko v. Weigland.*—The court found that refusal to hire married women, while hiring married men, constituted sex discrimination within the meaning of Title VII and awarded back pay to aggrieved females back to the time they were rejected for employment.

*Taylor v. Goodyear Tire and Rubber Co.*—Paying more money on sickness and accident claims to male employees than to female employees was held to be sex bias and cannot be justified by the fact that the cost to the company for providing the benefits was higher for females than for males. Damages for this discriminatory plan were awarded back to the time Title VII became effective. Furthermore, the court found the labor union equally liable with the company for such damages, since the discriminatory differential was directly attributable to the joint action of the union and the company in contract negotiations.

And finally, EEOC decisions have created significant changes in state laws which have been adjusted to meet the new thrust for equal employment opportunities for male and female workers. Many states revised their laws to prohibit employment bias based on sex, to extend legitimate "protective" legislation to male workers as well as female workers, to equalize insurance and pension benefits, to extend minimum wage legislation to men, to revise maternity leave and pregnancy policies, etc. In recent months, the following changes in state laws have been noted:

As of July 1, North Dakota, South Dakota and Connecticut have repealed the hours limitations on female workers. Utah's hours limitation law was repealed in May.

Colorado's anti-discrimination law has been amended to prohibit sex discrimination by employment agencies and labor organizations.

Maine's anti-discrimination law has been amended to include a prohibition against sex bias.

Minnesota's anti-discrimination law was amended to prohibit discrimination on the basis of marital status.

New York has amended portions of its "protective" laws relating to newspaper carriers and to restrictions on night work and hours limitations. New York also modified the law restricting employment of women following childbirth.

It is apparent that the more positive stance now being taken by the Equal Employment Opportunity Commission has encouraged courts and state legislatures to take similarly affirmative action. It is unfortunate that some of the Commission's early negativism delayed meaningful change for several years.

#### PROGRESS THROUGH PRESSURE

It would be an error for me to leave this committee with the impression that the change in attitude and behavior of the EEOC has come about naturally. The fact is that the new responsiveness of EEOC can be traced almost directly to the founding and growth of the women's movement.

When I resigned in November of 1966, there was no strong feminist movement. The National Organization for Women (NOW) had been founded in late June of 1966 at a national conference of Commissions on the Status of Women; its organizing convention was not held until October 29-30, 1966, but the fledgling organization had spent a busy summer becoming a thorn in EEOC's side. NOW had protested the failure of President Johnson to reappoint Commissioner Richard Graham, a strong supporter of equal rights for women, to a second term on the Commission; they had threatened mandamus action against the Commission for its incredibly wishy-washy help wanted advertising guidelines; they had challenged both the airlines' industry contention that sex was a bona fide occupational qualification for the job of flight attendant and the Commission's failure to rule against that position. Far from "going away" the movement began to mushroom in growth. Hundreds of NOW chapters sprang up in cities from coast to coast. New organizations were formed—Women's Equity Action League (WEAL) which bravely set out to force the government to make its federal contractors obey the laws against sex discrimination; Federally Employed Women (FEW) which began to insist that the Federal family clean its own house by taking affirmative action to eliminate sex discrimination. With the adoption of Executive Order 11478, the Civil Service Commission was given the responsibility for monitoring equal opportunity efforts within Federal employment. There seems to be almost unanimous agreement that the program has been less successful than it should be. Many regard the placing of responsibility for action with the CSC negatively, since in their view the Commission itself has been a major perpetrator of discrimination. The Federal Women's Program (FWP) has also been subjected to criticism with many female employees complaining that the women selected as coordinators are not always committed to eliminating sex discrimination, have little power, have little time to give to activities and tend to focus too heavily on the upper level female employee.

The Office of Federal Contract Compliance was viewed as a potentially powerful ally in the battle against sex discrimination because of its jurisdiction over Federal contractors. In July 1970, the National Organization for Women (NOW), in multi-city demonstrations, launched a campaign to force the United States Department of Labor to extend Order #4 (requiring Federal contractors to set goals and timetables for minority hiring) to include the same goal-setting for women's employment. Secretary of Labor James Hodgson was the primary target of NOW's pressure, and on August 26, 1971, he capitulated and in press releases announced that Revised Order #4, including goals and timetables for women, would become effective December 4, 1971. Using the order as a mandate for action, women's groups have filed charges of sex discrimination against virtually every university and college receiving Federal funds and against most of the major corporations—nearly all of whom are Federal contractors. Funds have been temporarily held up pending developing of affirmative action programs, but the program has suffered because of the small compliance staffs in Federal agencies. The backlog of cases and complaints in both the EEOC and OFCC is staggering and delays are running as long as two years in processing complaints. Women are also charging that the plans, when finally adopted, are meaningless because OFCC has no staff to monitor progress.

Increasingly, women's groups are initiating private law suits, on a class action basis, to hasten change. As soon as the time limits for Federal agency

action run out, the women move into the courts for redress. They recognize that court litigation also takes time, but they believe, armed with court awarded actions, more progress can be made. Courts are also approving legal fees for attorneys on such cases and this is encouraging this avenue of action.

Another weapon which is producing results against sex discrimination is the Equal Pay Act of 1963. Through the Wage and Hour Division, entire classes of women employees (and occasionally some male employees) are receiving impressive back awards (with interest) for violations uncovered by the Division. More and more women are turning to this method of redress because individuals are not required to be identified as complainants for the Division to proceed with its investigation into alleged violations. In fact, all such investigations are made without an identified employee alleging that he/she has been aggrieved. Since women, like minorities, prefer not to risk the loss of jobs or harassment on the job because of their efforts to eliminate discrimination, this avenue of redress is gaining in popularity.

In a landmark Federal court decision, the Equal Pay Act's clout was considerably enhanced by a ruling that women performing work which is "substantially equal" to that of men should receive the same pay. The retail sales field has been notoriously discriminatory in its treatment of male and female sales staff. In 1970, Census reports placed the median income of female retail sales workers at 42.8% the income of men. A recent Fifth Circuit court decision has affirmed a lower court ruling in Alabama that Loveman's (part of the City Stores chain) illegally paid women working in the women's clothing department less than men working in the men's clothing department for "substantially" equal work. The decision requires the company to pay women sales staff back wages, (including six percent interest) from 1969 to the present and to raise their wages to equal the men's.

#### PROBLEMS NOT OVER

What I have cited thus far may appear to suggest that there has been strong enforcement of the laws against sex discrimination and major progress for women in employment. This conclusion is unjustified.

Resistance to full equity for women in employment still remains. Prejudice and stereotypes still force too many women into limited job patterns—even where shortages of personnel are apparent. For example, in law enforcement positions, women have been underutilized while police officer jobs remain unfilled.

Access to education and training for women is still minimal in many types of career opportunities—business administration, school and university administration, medical specialties, etc.). Counselling for such careers is not available.

Textbooks and toys still program boys and girls for stereotyped roles.

Child development centers are too few in number to provide real opportunity for parents to take advantage of existing educational opportunities or job opportunities.

And perhaps the critical issues, jobs are too few in the society as a whole to augur well for expanding employment opportunity for minorities and women. In a "job-scarce" society, the fear of unemployment will stiffen resistance to special programs to overcome past discrimination against women and minorities. And it is unrealistic, as well as callous, to expect minorities and women to compete among themselves *and* with white males for the few jobs which are opening. It is incumbent upon our society to provide employment opportunities for all who wish to work; it is unacceptable to suggest that full employment is only possible in time of war.

#### TIME TO PLAN FOR "INCLUSIONARY" ECONOMICS

The Joint Economic Committee has a responsibility to respond to recommendations made in the President's Economic Report, and "from time to time to make other reports and recommendations to the Senate and to the House of Representatives as it deems advisable." I hope this Committee will deem it advisable to take note of the fact that major changes are occurring in the economic structure of this nation. The old economic "wisdoms" seem to be failing. The economy will not right itself if we just leave it alone. We have to anticipate and plan if we are to have a healthy economy.

We can no longer tolerate an "acceptable" level of unemployment, especially if we are counting on the manipulated labor pools of the past—minorities and women—to wend their ways docilely in and out of the labor market on the demand of economists, or others at the helm of the ship of state.

A sine qua non for any acceptable economic philosophy is the provision of an equal opportunity for everyone to share in the fruits and the scarcities of the economy. We should be ready to share both employment and unemployment with more equity. We should eliminate all barriers based on group stereotypes and discrimination which tend to create disproportionate disadvantage for some groups. It seems to me necessary for government and private interests to move forthrightly and immediately to achieve full equality of opportunity for everyone in the society.

#### A TEN POINT PROGRAM

There are many things that should be done in the society and I am sure you will get a number of suggestions during this hearing which are excellent and which should be seriously considered and rapidly implemented. I would like to add my suggestions to that list :

1. Strengthen the powers and effectiveness of the Equal Employment Opportunity Commission by :
    - a. Permitting the Commission to initiate pattern and practice suits in the Courts against discriminatory private employers, unions, employment agencies and against state and local governmental units which violate equal opportunity mandates.
    - b. Eliminating the *requirement* that EEOC defer to state and local civil rights agencies and substituting the opportunity for EEOC to enter into agreements with such local agencies where they are willing to operate according to stringent Federal standards and regulations.
    - c. Providing for full public access to affirmative action plans ; EEO statistical data on employers, unions and employment agencies, educational institutions and governmental units ; conciliation agreements, etc ; in order to make such information available to citizen groups concerned with equal opportunity and willing to monitor progress in achieving EEO goals.
  2. Create, and adequately fund, an independent agency empowered to pursue equal employment opportunity within Federal Government. This would remove the present authority of the Civil Service Commission to oversee such activities.
  3. Substantially increase the Federal allocation to the Equal Employment Opportunity Commission, the compliance sections of all Federal agencies and the Wage and Hour Division of the Department of Labor.
  4. Provide legal assistance and a system of administrative courts so that complaints of employment discrimination can be handled quickly. This system would expedite the processing of such cases when conciliation efforts fail within the existing administrative agencies.
  5. Substantially increase the allocations for "humanpower" training and establish strong incentives—e.g. through special grant programs—in order to ease re-entry into the educational system, to encourage training in "breakthrough" fields and new career opportunities.
  6. Require strong equal opportunity commitments and detailed affirmative action programs (with goals and timetables) for women and minorities as a condition for receiving Federal grants, contracts, etc. These requirements should also apply to all programs for which Federal revenue sharing monies are used.
  7. Withdraw all Federal funds from communities, agencies, contractors, educational and health facilities, governmental units, etc. which fail to implement equal opportunity regulations.
  8. Enact legislation, with an appropriately high level of funding, which will create a system of high quality child development centers for all parents who wish to use them. Services should be provided free to those unable to pay and on a sliding scale for others.
  9. Adopt a humane labor standards act which would provide all workers—male and female—with adequate wages, flexible hours of work, shorter work days and weeks, child care facilities, health, unemployment and disability benefits, pensions and other protections against exploitation.
  10. Define new national priorities and redirect national resources towards creating full employment in a peacetime economy.
- I am encouraged by the fact that Congress is beginning to make efforts to achieve some of the things I have suggested. The House-passed amendments to the Fair Labor Standards Act are commendable and the passage last year of the Education Act and amendments to the Civil Rights Act are also steps in the right direction—but the impetus begun cannot stop. If the new legislation is to have real impact, it must be constantly monitored, evaluated and adjusted as necessary.

The issues I have addressed are issues which the American public cares about. Black women are organizing; Spanish-speaking women are organizing; Asian women and Native American women are organizing. The women's movement can no longer be identified as white and middle class.

Lou Harris, noted opinion poll taker, conducted two recent surveys for a well-known cigarette company. These polls showed a dramatic increase in public support for the issues of the women's movement between 1971 and 1972. In a comparison of the 1971 poll and the 1972 poll, Harris stated:

"A swing in attitude and a dramatic one is taking place among women in America today. When asked in 1971 whether they favor or oppose most of the efforts to strengthen and change women's status in society today, women were almost equally divided (42 to 40% opposed). Only a year later American women are voicing their *approval* of such efforts by a substantial 48 to 36%.

Significantly, men are expressing even greater enthusiasm than women for efforts to strengthen (49 to 36%) or change women's status in society.

Strong support for upgrading women's role in society comes from single women, black women, college educated women and women under 30.

The number of single women who now support these efforts increased from 53% in the previous survey to the present 67%. There was a strong positive shift in the 18 to 39-year old groups, both single and married. Among women in suburbs, 51% now favor change, compared with 41% about a year ago."

I am not surprised at these dramatic changes because I have always believed that people would eventually recognize that the feminist movement is the greatest potential for achieving major change because its goals are really the goals of *human* liberation.

Essentially what we, who have been "left out" are asking is that the American economy make room for us—that it expand to include our needs and our desires. We are calling for an end to the white male gerontocracy. We believe—to paraphrase an old homily—what's good for women and minorities is good for the country.

Our nation's success as a democracy will ultimately be judged by its ability to make the society *inclusive* rather than exclusive. It is time to take the necessary steps, as we approach the 200th birthday of our nation, to cross the threshold into a new era of OPPORTUNITY FOR ALL!

Again, Madam Chairwoman, I appreciated your invitation to testify to the Committee. I will be pleased to respond to any questions. Thank you.

Representative GRIFFITHS. Thank you for being here. You are refreshing.

I would like to ask you, Mrs. Sandler, who in HEW is supposed to be overseeing these affirmative action programs in colleges.

Mrs. SANDLER. It is the Office for Civil Rights, which is located in the Office of the Secretary. The Director of OCR also serves as the Secretary's Special Assistant for Civil Rights, responsible for overall coordination of HEW's civil rights activities.

Representative GRIFFITHS. How large a staff do they have?

Mrs. SANDLER. I do not know the size of their staff, but they are dreadfully understaffed. That is indeed part of the problem. However, even without understaffing there are a great many other problems.

Representative GRIFFITHS. I have asked each of three Secretaries, and HEW was one, and Labor was another, to appear here after this hearing is otherwise complete, and they will have an opportunity to review the criticisms that have been made, and explain to us what they were planning on doing about answering the criticisms. The HEW Secretary was not available for the week I set. But I will make sure there is another time.

Mrs. SANDLER. I would like that very much.

Representative GRIFFITHS. I was out in downstate Illinois making a speech this spring, and I found out there that they were firing women faculty members, they fired half in one department one year, and one-

seventh of the remaining the next year. And these women were telling me that by the time they get around to any compliance in that school, there will be no women left, they are getting rid of them so fast.

Mrs. SANDLER. There is a lower number of women in some schools now, after a year or two of affirmative action than there were before the affirmative action program was implemented. Now, some of this is partly because there have been budget cutbacks and institutions are having a hard time. But they are firing the people they hired last, and in that sense—they are perpetuating the effects of past discrimination.

Some institutions, even though there are budget cutbacks, are nevertheless still hiring some people, and even though the number of women has gone down, the number of men on some campuses has actually increased.

Now, with title VII, at least some of these women have an opportunity to get into court. Just a few weeks ago at the University of Pittsburgh, one woman did receive a preliminary injunction forbidding that institution from firing her.

I will say that the affirmative action plan and its inadequacy was cited as one of the evidences of discrimination on that campus.

Representative GRIFFITHS. Over the years the EEOC's guidelines on sex discrimination have been revised a number of times, Miss Hernandez. In your opinion at present do these guidelines fail to address any aspects of sex discrimination in employment which they should address?

Miss HERNANDEZ. I think the one area where there is still not much activity is the whole question of responsibilities of women for children. Very few employees are being asked to do anything seriously about the question of child care. EEOC's guidelines I think are by far the best in operation right now, and OFCC obviously should bring their guidelines into conformity immediately. I am certain if the issue were one of a present Federal contractor not obeying some other portion of the law adequately, they would not wait for the courts to make a decision, they would act immediately. And therefore I would suggest that the EEOC guidelines be immediately adopted by OFCC.

Representative GRIFFITHS. Mrs. Koontz, the Labor Department Office of Federal Contract Compliance is ultimately responsible for enforcing Executive Order 11246 on behalf of women. But actual enforcement duties are delegated to the various Federal agencies. Does the figure of enforcement vary from agency to agency?

Mrs. KOONTZ. I can't give you the data on that. But I have understood that it does, because to a great extent the compliance effort is left to the agency, with some sort of overall guidelines suggested.

Representative GRIFFITHS. Do you have any idea which agencies do the best and worst jobs?

Mrs. KOONTZ. As I listen to Bunnie Sandler, the best is not very good.

I would think that a proper assessment would be that the Equal Pay Act enforcement under DOL's Wage and Hour Division would be perhaps the best, but that does not mean that OFCC, or the Labor Department, is the best, it is simply that that particular aspect has been pursued so vigorously.

Miss HERNANDEZ. I would hazard a guess, and I would be delighted if somebody could prove me wrong, that these agencies that have been doing the better jobs are those agencies that have some women employed doing the job.

Mrs. KOONTZ. With authority.

Miss HERNANDEZ. Yes.

Representative GRIFFITHS. I would think that would be correct. But there are so few places with women.

Mrs. KOONTZ. I think one of the problems also is that many women may be hired, but if they are not aware, they perform their activities in the same manner and with the same viewpoint as men might. Consequently, there is a need for looking a bit deeper, and also providing for their awareness, which is an effort that I think the Federal Government might make. And certainly I can't think of any better agency than the Women's Bureau as being able to do this. I think when we realize how much effort we have spent in informing women throughout the country, and how little we were able to spend because of this structure, and because of that disadvantage of access to those who make the decisions, for women in the Federal Government there is almost negligence on the part of all agencies. And certainly as Director of Women's Bureau these past years I would accept the responsibility for not having done enough for the women in the Federal Government in terms of enlightenment about the whole matter of attitude and cultural conditioning, I should say, that women themselves still evidence in the Federal Government.

Representative GRIFFITHS. In your opinion should the Office of Federal Contract Compliance supervise the enforcement efforts more closely, or should there be somebody else?

Mrs. KOONTZ. I think there are some limitations. In fact, I think when we advocated an Office of Women's Rights and Responsibilities, it carried with it an idea that it would not be subject to simply the restrictions of any department, which is where the difficulty is now. Women face problems as individuals, as women per se, and as female employees. And there is a tendency to look only at the women as female employees, do a little bit, and then consider the job as having been done, when in fact their concerns cross all departments of the Federal Government. And I think placing it in any particular department only then suggests that at budget time that agency cannot in effect justify an inclusion of the necessary budget or an adequate budget for the kind of activities needed, because it extends into other agencies.

Miss HERNANDEZ. I was going to suggest that if I had my personal preference, and if they were differently staffed, I would place the authority in the Office of Management and Budget, because what I would have them do is simply cut off funds for agencies which did not comply with equal employment opportunity provisions. Unfortunately the staff of the OMB is not the place to put it. I would like to see impoundment of Federal funds for lack of enforcement of equal employment opportunity. It would be a lot different from impounding Federal funds for social programs.

Mrs. KOONTZ. Again, I think you can place it anywhere you want. But unless we use the same means of getting knowledgeable women into a position where they can voice their opinions or have a voice, we are not going to have done anything about it. And consequently I cannot go along with this matter that we are cutting back their staff and Federal positions when we use "assistant to" and those other extra titles outside in order to bring in the talent we need for special

jobs. I think we ought to pursue those same measures and means to get women who are knowledgeable right now, not next year, but like yesterday, so that they can advise top policy people as to what ought to be done and place them in positions where they will be heard.

Mrs. SANDLER. Periodically there are efforts to transfer the enforcement of the Executive order to EEOC. At this point I think that it would be a mistake. First, it is always better for many women to have more than one place to go to put the pressure on. But I also think there are historical reasons which are valid to keep Executive order enforcement separate. The Executive order has traditionally been ahead of Federal civil rights legislation, and it has been a testing place to test out new types of enforcement, and new types of procedures. Now, it seems to have not done very much of this in the last few years. Nevertheless, because the Executive order is dependent upon a voluntary contractual arrangement with contractors rather than something that covers everybody—you voluntarily agree to sign a contract and follow those provisions—there is a great more potential flexibility in testing out new ways of dealing with discrimination. While the EEOC is dependent on specific legislation, and if the two were under one administrative unit, it would make it extremely difficult to test out new programs because the two programs would tend to merge and become identical. I think it would weaken the Executive order enforcement potential.

Representative GRIFFITHS. How could the problem in HEW be alleviated in the checking of the educational institutions?

Mrs. SANDLER. I think you need a strong commitment that says the problems of education are extremely important. If women cannot make it in educational employment, or as students, they are not going to make it anywhere else in society. I think there needs to be some very sound congressional exploration and investigation, like we are having now, of precisely what is going on over there. I think it has been abysmal, and obviously needs some looking at. It would seem to me that the Office for Civil Rights must be taken to task for what it is they are doing and what it is they are not doing.

Representative GRIFFITHS. Would it help if you use Mrs. Koontz' suggestion and put a few women in top positions to look into it?

Mrs. SANDLER. That would certainly help. We are delighted that OCR has hired a woman who will head up the Division of Higher Education to carry enforcement in universities and colleges. It will take a great deal more than one woman, it will take a great deal of pressure from all sides.

Representative GRIFFITHS. It will take some people who know what they are doing and will keep asking and revising the standards.

Miss HERNANDEZ. I think that last point is crucial. If that information is not absolutely public, the information on what has been done, the affirmative action gains, the conciliation agreements, there is not going to be monitoring, the fact is that you will never have a sufficiently high standard of compliance—no matter how many people you hire—to monitor every single Federal agency, Federal contractor, or institution. It depends on an extremely active outside group of people who care enough about this to do that monitoring individually, but they cannot do it if they do not have access to the information.

Representative GRIFFITHS. One of the unfortunate things is that when really good settlements have been reached, it has not been given wide publicity. Even the *A.T. & T.* case was not given the widest publicity.

Miss HERNANDEZ. I think it is extremely important to put more of this into the public view, and to make that information available to all activist organizations so that they in turn can do what needs to be done on monitoring, because it is not going to be done internally.

Representative GRIFFITHS. Mrs. Koontz, while you were Director of the Women's Bureau the Employment Standards Administration was reorganized. Did you find this reorganization affected the operation or performance of the Bureau, and if so, how?

Mrs. KOONTZ. Yes, I found it affected it. There was a movement in all of Government toward decentralization. The problem with the Women's Bureau is, that with only one professional staff worker in each region to start with—covering approximately five states—decentralizing that one person's activities which had to cover the specific areas of the administration under which the Bureau functions—employment standards—limited, in terms of time justification, what that person could do according to the needs of women in that region. Consequently, it was the very structure itself is. Had the director of the Women's Bureau been an assistant secretary, had that Bureau been an Administration, then there would have been a staff in the region functioning on its own subject to the same kind of arrangements that were necessary in the decentralization for all administrations. It would not have been, then, further submerged under one administration without direct access to the others. Consequently, the demand of women's groups to establish the Bureau at an administration level I think is a very sound one, and should be given greater attention and focus, and actually should be carried through.

Now, this would mean, then, that at the regional level the Women's Bureau representative would have the same kind of access. But unless those regional directors are directly under the Women's Bureau at the national office, I do not see how we can call it an outreach or an arm of the Bureau at all, it is simply another person in the field. And apparently that is what is has amounted to in effect. In that way it has been prohibitive. But again I think if we hear what the two other persons here are saying, the women's organizations themselves have assumed a greater responsibility than ever before. But I do not think it is to the credit of Government, because in so doing many of them have felt that the Government itself is not doing its part by women, and that they are assuming responsibility they should not have to assume in the pursuit of information, the availability of that kind of data that are being collected or not collected, and certainly in having access to the officials whom they need to have perfect access to in order to get interpretations, to appear and be a part of the groups that they invite, et cetera.

Simply, I would say the Women's Bureau itself ought to be established at a sufficiently high level that it does not have to go through the frustrations and anxieties of the levels within an administration in order to get to other administrations that hold the keys to actions concerning women.

Representative GRIFFITHS. Each of you has certainly had sufficient experience in the political field and in the enforcement of these rights. I would like to ask you, in your judgment does the lag in enforcing rights for women occur because of past prejudices or lack of understanding, or do you think there is some politics in it?

Mrs. KOONTZ. I think that it is both. If we consider the facts that men sit at the head of most of the agencies, men in the Congress, and whatever it is we are considering. Generally we are dealing with persons who have by tradition grown up believing that all women are the same in effect, as their wives. And therefore their mentality or their thinking is in that line. Consequently even in what I would consider an intelligent debate there is a tendency to say, "But my wife does not do that," or "My wife would not want to—." This is a part of what we mean by the institutionalized sexism, perpetuated by very intelligent people who in other instances have grown a great deal and have a lot more understanding.

You would think on the other hand it is political to the effect that we have been dealing with a high unemployment problem, and that there has not been very much attention to the fact that women make up a large portion of the unemployed and the discouraged workers.

On the other hand, I think there is also a tendency to believe that it is "all right for women to be on welfare," because "women are supposed to be taken care of." Now, "taken care of by whom?" gets a slap in the face, when we look at all of the discussion about welfare.

So if we are really assessing it, I would have to ask the question of whether in the goals of each department, do we see elimination of sex discrimination written out or even articulated as a priority area? We do not.

Representative GRIFFITHS. Of course it is not in any department.

Mrs. KOONTZ. I think that is one of the needs.

Representative GRIFFITHS. I have assumed for some time that welfare is really a sort of apology for sex. Out at the University of Michigan I am sure you will be glad to know that a young man has run a survey on welfare, and has decided that as a matter of fact it really is sexist and racist. Now, if he can just get that information to the President of the University and to the regents, it is entirely possible that they will come up with a good affirmative action plan.

Miss HERNANDEZ. I am really seriously considering a shift in strategy, and instead of pushing so hard for equal employment opportunities, suggesting that we begin to push for equal unemployment opportunities. Perhaps if we put our emphasis on sharing unemployment more equitably we would do something about getting more jobs in society. If we had to have the unemployment pool more accurately reflect the national percentages of groups in the population, we might indeed begin to have a high push for full employment for everybody.

I think the point that was made earlier by Bunnie and by you also, about women who have been pushed out of jobs because they were hired last and they are cutting back is an extremely important point. In California, where we are noted for circulating petitions on virtually every subject, there is presently a petition being circulated to make affirmative action programs unlawful. And that is likely to go on the ballot in November in California to prohibit any type of affirmative action programs, which call for the setting of goals and

timetables. I am convinced it will be declared unconstitutional, but it is going to take a tremendous amount of California effort to block that. But that is the kind of thing that is going to happen because there are not jobs available.

Mrs. KOONTZ. But as we look at the jobs that are available, and the fact that people still hold to a feeling about women's roles and men's roles, men's jobs and women's jobs, there are women who are trained for many of these jobs if there were an effort made to recruit them and make available the necessary arrangements. We have jobs going lacking, but we still do not have women being urged to take them. We talk about a medical doctor shortage, but they are not considering accepting any more women in medical schools or providing certain kinds of training except as nurses or paramedical, very low-paying jobs.

Representative GRIFFITHS. Why do you think the job training programs have been filled predominantly by men?

Mrs. KOONTZ. Because there is a prevailing cultural conditioning that a man is supposed to take care of his family, and whether he has a family or not never gets into it. Or whether he has left his family does not get into it. The fact is that all the men in the country cannot take care of all of the women in the country.

Mrs. SANDLER. Men are supposed to work and women only work if bad things happen to them, if their husband is sick or something like that. And we do not realize that most women are now working.

You asked about how much was attitude in enforcement, and how much was political. As women begin to press harder and harder it will get more and more political.

Representative GRIFFITHS. Yes; it has to be. Because, of course, it can all come through political action. If just one Senator in every State that has so far refused to ratify ERA is defeated on that basis, ERA will be ratified in that State. It just took one Senator in Vermont.

Mrs. SANDLER. That is exactly what the women's suffrage movement did; they defeated two Senators who opposed suffrage, even though the women themselves did not yet have the vote.

Representative GRIFFITHS. You suggested that Federal effort to enforce laws prohibiting sex discrimination be coordinated among agencies. How feasible is this, given the separate but sometimes overlapping areas assigned to each agency?

Mrs. SANDLER. There is very little coordination and it is very much needed, particularly in relation to the collection of data. It is not very efficient to have HEW come and ask for information, and then be followed by equal pay people asking for similar information, followed by EEOC. It seems to me there could be some basic kind of data which could be uniform which could still allow an agency to ask for additional information if needed. To ask for salary data at three separate times and three separate ways is wasteful of everyone's time. I also think there needs to be a push perhaps from the Equal Employment Coordinating Council set up by the title VII legislation, to get OFCC to ask that its contractors follow the laws that everybody in the land has to follow, including the contractors. That committee has a potential to work out some of the very basic kinds of things that could be done in terms of coordination.

Representative GRIFFITHS. Mrs. Koontz, in your opinion what real power does the Women's Bureau have?

Mrs. KOONTZ. I think the only real power that the Bueau has is that of making the data available or known to the women who have the kind of collective clout, to move as a pressure group. And frankly, I think that is not enough.

Representative GRIFFITHS. What do you think they should have?

Mrs. KOONTZ. In reference to your last statement, for instance, a coordinating function for the Women's Bureau with all agencies of Government, whether it actually had the power to ask for, to review, and to recommend and to make known what had been recommended, in terms of agency programs of enforcement for its own employees and for its clientele, for instance, would be a very beneficial type of function added. It needs to be declared an advocate for women.

Representative GRIFFITHS. In view of the fact that your resignation was accepted, I think there should be also established something like the case of Comptroller General, once confirmed that they can't be removed by a President, that would be quite helpful.

I want to thank all of you for being here. You were excellent witnesses, as I was sure you would be. I enjoyed it more than I can say. And I hope that together we can help others. The committee stands recessed until tomorrow morning at 10 o'clock.

[Whereupon, at 11:55 a.m., the committee recessed, to reconvene at 10 a.m., Thursday, July 12, 1973.]

## ECONOMIC PROBLEMS OF WOMEN

---

THURSDAY, JULY 12, 1973

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10:02 a.m., in room S-407, the Capitol Building, Hon. Martha W. Griffiths (member of the committee) presiding.

Present: Representative Griffiths.

Also present: Lucy A. Falcone and Sharon S. Galm, professional staff members; Michael J. Runde, administrative assistant; and Walter B. Laessig, minority counsel.

### OPENING STATEMENT OF REPRESENTATIVE GRIFFITHS

Representative GRIFFITHS. Will the witnesses please take their seats. Miss Chapman, Miss Gates, Mr. Taylor, Mrs. Shack, and Mr. Denenberg.

Mr. ROHDE. Mr. Taylor couldn't be here today.

Representative GRIFFITHS. I understand. Thank you very much. And your name is—

Mr. ROHDE. Steve Rohde.

Representative GRIFFITHS. We are going to start. We will have Mr. Denenberg join us as soon as he can.

The Joint Economic Committee continues today its inquiry into economic problems of women. During the last 2 days we have heard well-documented evidence of discrimination in employment. We turn today to two areas where the discrimination is less overt—where the instances of sex discrimination are harder to collect systematically. Because of a lack of statistics, employers and banks cling to stereotypes about women. No Federal agency requires banks or credit companies to report the number of applications they receive by sex, how many they turn down and for what reason. In insurance, a similar situation prevails. Most State insurance commissioners have nothing more to go on than the complaints they receive from citizens. The number and variety of complaints that women are now making against insurance companies, banks and credit companies will only insure a woman for a fraction of the number of years they will insure a man. Yet comparative disability statistics do not support these large differentials in premiums for men and women.

With respect to auto insurance, one would think that women, having lower accident rates, would have relatively few problems in obtaining insurance. But this is not the case. Single women, living on their own and working full-time, must pay high rates because they do not

live with their parents. When a woman is divorced she often must pay high risk rates for auto insurance. The divorced husband, of course, continues to pay the same rates. Mr. Denenberg, would you please take your seat at the table. I know of no statistical evidence showing that divorced women present higher auto insurance risks.

Women have greater problems obtaining health insurance and must pay higher rates for it. Many companies exclude coverage of any disorders relating to the reproductive system without putting any similar restrictions on men; many companies restrict sharply their coverage of pregnancy.

The degree to which most insurance companies unfairly discriminate against women became clearer when Senator Hart subpoenaed sales and underwriting manuals of these companies last year. Poor risks are defined by the manuals as physical or more hazards. The people in this category, whom the insurance companies usually refer to as clunkers, include all women along with residents of poor neighborhoods, reckless drivers, and those who work in hazardous occupations.

*credit* → In the area of credit, discrimination is no less severe. Single women who apply for a mortgage or personal loan are often required to have cosigners even though their incomes are high enough to secure the loan. Married women who work find that lending institutions often discount most of their salaries when they and their husbands apply for a mortgage. When the Federal Home Loan Bank Board conducted a survey of 74 savings and loans, they found that only 22 percent would count all of the wife's salary, 26 percent would count only half her income, 10 percent would count one-quarter and 25 percent would count none. I know of no evidence showing that married couples default on mortgage loans when the couple has children. Given the high cost of housing today, many couples are unable to qualify for loans unless the wife's earnings are counted. This discrimination against working wives probably falls most heavily on young married couples buying their first home. National housing legislation ostensibly promotes homeownership, yet there is no regulation of lending practices which often work counter to these goals.

Women, married, divorced, or widowed, encounter repeated discrimination in applying for consumer credit. Upon marriage, many credit companies require a woman to reapply for credit under her husband's name, even when she earns adequate income. Under the Married Women's Property Acts, a woman may acquire and transfer property, sue and be sued. Why shouldn't she also have credit in her name?

The irony of these credit practices is that when a woman is divorced, separated, or widowed she often is denied credit by these same credit companies on the grounds that she has no established credit record. Many of these women could easily present a credit record had they not been forced to give up their economic identity by creditors.

Legislation mandating an end to sex discrimination in credit is now before the Congress. We also need, however, to conduct surveys and studies of the types of credit and insurance discrimination practices against women. Data should be collected which proves whether or not

women are poorer credit risks than men, whether women actually present higher insurance risks.

Our witnesses this morning have accumulated fresh evidence of sex discrimination in credit and insurance. Herbert Denenberg, commissioner of insurance for the State of Pennsylvania, has appointed a task force to study discrimination against women and has already collected numerous complaints. He is the author of a highly successful and useful book "The Insurance Trap."

Mrs. Barbara Shack is assistant director of the New York Civil Liberties Union and has received many complaints on sex discrimination in insurance.

Margaret Gates and Jane Chapman are codirectors of the Center for Women Policy Studies. This center is completing a study on the availability of credit to women made possible by a Ford Foundation grant. They will discuss some of the preliminary findings of their study.

Steve Rohde is with the Center for National Policy Review. The center has served as counsel to women's groups seeking reform of mortgage lending practices.

Ladies and gentlemen, it is a pleasure to have you appear before the committee this morning and we look forward to your testimony. In the interest of allowing enough time for questions I suggest you try to restrict your statements to about 15 minutes if that is all right.

Mr. Denenberg, we will begin with you.

#### STATEMENT OF HON. HERBERT S. DENENBERG, COMMISSIONER OF INSURANCE, STATE OF PENNSYLVANIA

Mr. DENENBERG. I would like to thank you for the opportunity to be here today.

The problem of sex discrimination in insurance has been serious, widespread, and up to now, largely ignored. As a result we have just begun to think about the problem. We are nowhere near its solution. So I would like to congratulate the Joint Economic Committee for including insurance in its investigation of economic discrimination against women. I have submitted a prepared statement for the record. At this time I will present a summary.

Representative GRIFFITHS. The prepared statement will appear in the record at the end of your oral statement.

Mr. DENENBERG. Denial of equal access to insurance, at fair rates, affects the economic status of all women. It touches employment discrimination, opportunities to hold a job, ability to maintain a family in the face of personal catastrophe, and economic security. Other economic disadvantages of women can be magnified by discriminatory, inadequate, or prohibitively costly insurance. But insurance protection that serves women's needs can alleviate many of these economic burdens. It is time that insurance start working for and not against women.

Today, I would like to describe how the sex classification system used by insurance companies has led to discrimination against women in the areas of underwriting, coverage, and rates. I am also going to discuss how their problems have been perpetuated and accentuated by the exclusion of women from the decisionmaking processes of insurance companies. Finally, I will present some goals to work toward in solv-

ing these problems in the form of the Women's Insurance Bill of Rights.

The insurance industry is, first and foremost, a business trying to make a profit and protect itself against unanticipated losses. In order to protect against excessive losses, an insurance company attempts to distribute the potential losses of policyholders among all those who pay premiums.

Traditionally, sex has been used as a distinguishing factor in insurance because it is a convenient, simple and efficient way to divide people into risk categories that produce different loss potentials. Today, we have to ask, is this fair?

In making their choice of classifications, insurance companies are generally content to do so without regard to public policy considerations other than the immediate economic needs of the insurance company.

With few exceptions, whatever classification system best reflects losses is most acceptable to the industry. The insurance industry's emphasis is actuarial and not social; it is economic and not humanitarian.

The insurance industry has traditionally established higher rates for one sex rather than the other whenever sex classifications produce significant loss or cost differentials. You can get a rough idea what happens looking at exhibit 1 which is attached to the prepared statement. It shows the variation in rates for different kinds of coverage. In some coverages, like automobile, the female actually gets a lower rate. In others like basic health, major medical, and income disability, the woman pays more. Women pay more also for annuities and some other lines of coverage. Men pay more for auto insurance at younger ages and more for life insurance. Some kinds of insurance do not involve classifications based on sex—that is, homeowners and title insurance.

There are some convenient bases for classification which the insurance industry does not now use. One is race. Although blacks have a shorter life expectancy than whites, no classification based on race is used. Such a classification is considered to be unacceptable from a public policy standpoint.

Like classifications based on race, sex classifications have finally become suspect. Pennsylvania, like some other States, has an amendment to its constitution guaranteeing equal rights to women. Hopefully, we will have a similar amendment to the Federal Constitution in the near future.

With changes in the economic, social and legal position of women, the once homogeneous classification of women has become less meaningful. It is clearly time to force the insurance industry to reevaluate all sex classifications of the insurance business. The Pennsylvania Insurance Department is now doing so.

Such reevaluations are especially important because insurance by its very nature is selective and discriminatory. Every possible consideration from the personal, moral, and statistical to the irrational is taken into account in order to minimize the insurance risk. Underwriting is the process by which this is accomplished, by the selection and rejection of risks and the decision on the terms of the policies.

Historically, underwriting in the insurance industry has been dominated by men and many policies were originally written for men. Many of the underwriting assumptions, if ever valid, are clearly erroneous in the 1970's.

These outdated and biased assumptions are most evident in the area of disability insurance, which provides payments to replace income when the insured is unable to work due to illness, injury, or disease.

Disability insurance is important to anyone who is self-supporting, who is the head of a household, or who is a major contributor to a family's economic status.

Insurance companies selling disability coverage don't seem to realize that, as of March 1972, half of the 33 million women working were single, separated, divorced, widowed, or had husbands earning less than \$3,000 a year. These women have a substantial need for income protection. Underwriters, however, seem to assume that women don't need or want to work, so that disability pay would just be extra income for some woman who would really prefer to stay home with the house and children.

A man and a woman in the same occupational class and the same age should be able to buy the same disability income benefits. But they often can't. Many companies restrict women to a benefit period of 2 to 5 years, while a man in the same occupational classification can buy coverage which pays benefits to age 65 or even for life.

Insurers are also suspicious about women who work at home or who work for relatives. Some underwriting rules tell the agent that women in these types of work are unacceptable risks, but don't say anything about men in the same situations. If a woman works for her husband, she probably can't buy disability insurance, but if her husband works for her, he probably is insurable.

Insurance regulators should require companies to file underwriting manuals, agent's promotional materials, training guides, and related materials with State insurance departments. These must be reviewed for sexist content as much as the policies themselves. This is an important first step. Insurance regulators should also stop approving policies which have different benefits or underwriting rules for men and women.

A second basic insurance problem is access to comprehensive coverage. Coverage must be available regardless of age, marital status, or the personal prejudices or myopia of the industry.

Women have found that insurance coverage is inadequate or totally unavailable in at least two important areas: Coverage for pregnancy and its complications, and coverage to replace childcare and homemaking services of women who do not have an income.

Medical expense insurance covers medical, hospital, and surgical costs. All women have a right to adequate medical expense coverage for all their needs, including comprehensive maternity benefits, for pregnancy, deliver, miscarriage, abortion, and all complications.

Inadequate pregnancy coverage takes different forms in different insurance plans. In exhibit 2 attached to the prepared statement we have some of the coverages and absence thereof in some of the large group plans. Such plans tend to be more comprehensive and more liberal

than individual and small group policies would be. Those in the exhibit are all large employers in Pennsylvania.

In some plans, especially those issued by commercial health insurers, maternity expenses are subject to a flat maximum payment for both medical/surgical and hospitalization expenses. In the same plans, costs of other illnesses and injuries are reimbursed more flexibly.

In other plans, hospitalization for maternity may be limited to a certain number of days while most other illnesses and injuries are not limited.

Another problem is that maternity benefits are generally restricted to married couples enrolled in family plan contracts.

It is certainly reasonable for an unmarried woman to want the protection of maternity coverage.

Dependent female children also need full maternity coverage which they typically don't get.

And, even adequate insurance coverage can be nullified by claims procedures which do not guarantee privacy. Insurance companies which don't take precautions to insure privacy about the nature of insurance claims may be helping employers to discriminate against women.

Pregnancy-related problems also arise in disability income insurance. In medical expense insurance, pregnancy receives insufficient coverage; in disability insurance, it is typically excluded altogether.

Providing full disability coverage for all income losses caused by every pregnancy raises some tough questions for two reasons. (1) How long a woman works before birth and when she returns afterwards are largely matters of personal choice; (2) the cost of full coverage would be high since disability coverage is not a widely sold type of insurance.

But there are changes that would be economically feasible as well as socially desirable. One would be to cover complications of pregnancy even if normal pregnancies were excluded.

Any woman whose pregnancy resulted in a medical ascertained disability beyond the period for a normal delivery would qualify for disability benefits.

Complete coverage also means that women who are homemakers should be able to buy disability insurance that fairly measures the economic value of childcare and homemaking. Homemakers also make a real economic contribution.

Many insurance companies say that they can't determine the value of a homemaker's work. It can't be all that difficult to figure out the cost of maid service, and live-in babysitters. Companies should be responding to the demand for this type of insurance. Few are doing so.

It is not enough to eliminate sexist underwriting practices and to make fuller coverage available, if women cannot afford to buy it. Unless we change our rating system as well, this is exactly the situation we will find ourselves in.

We have to find better ways to spread the cost and more equitably distribute the risk. One possible way to do so is by charging men and women equal insurance rates despite different loss experience—unisex rating.

However, the practicality of unisex rating varies from one kind of insurance to another and should be considered separately in each case.

For instance, in automobile insurance the factors which really cause the difference in losses—like how much a person drives, can probably be sorted out, and can then be used to replace sex as classification factors. Unisex rating for automobile insurance would, therefore, be an attainable goal in the near future.

Disability coverage poses the most difficult problem as the loss experience of women, even with pregnancy costs excluded, may run  $2\frac{1}{2}$  times higher than costs for men. Because of such loss difference, a unisex rate would not be workable in the absences of some alternative classifications. They should be sought. As more disability coverage is sold to women and as further statistical information is gathered, it will become easier to find alternative methods of classification. The same general approach can be followed for life insurance and annuities.

Unisex rating could be imposed now, but it would probably create more problems than it would solve. If applied across the board, it might magnify rather than diminish the economic disadvantages now faced by women.

Women do not have an impact in two areas which are closely related to the problems we have been discussing of insurance underwriting practices, insurance coverage and insurance rates. These two areas are employment in the industry itself and representation as members of boards of directors.

Of the 1.3 million people who reported working in the insurance industry in the 1970 census, about half were women. But too few of these women are in positions where they could change discriminatory practices from within.

Exhibit 3, in the prepared statement, shows 1972 data on women workers in the industry by kind of insurance. Accident and health carriers, for example, in the first column, had a work force that was 70-percent female. But where are these women workers? Exhibit 4, in the prepared statement, tells the story. The overwhelming majority of female employees, 85.7 percent to be exact, worked in office and clerical jobs. Less than 12 percent of all male workers were in office and clerical jobs.

Women have often not been given access to insurance company boards, to Blue Cross-Blue Shield boards, to hospital boards, and to the governing bodies of the institutions that run our system.

Exhibit 5, in the prepared statement, shows that representation of women is token, at best. Each of the top five life companies has only one woman among 40 or more top officers and directors. Overall, about  $97\frac{1}{2}$  percent of those boards are made up of men. You can't tell me that women aren't as qualified to direct a major company as the 10 male farmers and ex-farmers who dominate the board of directors of one of Nationwide's companies. No offense to farmers.

This has been a sketch of the problems of sex discrimination in insurance. Solutions are, of course, more difficult, particularly when, as in this area, the problems themselves are just being recognized and the raw data just being collected.

So rather than present today a detailed list of needed reforms in this area, I think it better to outline instead the goals and principles we should aim toward. What we need now, and what I would like to present, is a "women's insurance bill of rights," outlining the mini-

mum rights women should be granted as insurance policyholders and employees.

The rights are as follows:

1. The right to equal access to all types of insurance.
2. The right to premiums that fairly reflect risks and not prejudice.
3. The right to protection against arbitrary classification based on sex and against sex classification when other bases which might be appropriate have not been utilized or even explored.
4. The right to equal employment opportunities in the insurance industry and its regulatory agencies, and to a fair share of scholarships and financial assistance for the study of insurance.
5. The right to nonsexist and nonjudgmental treatment by agents, brokers, claims representatives, and all others who deal directly with policyholders.
6. The right to representation on the decisionmaking boards of commercial insurance companies, Blue Cross plans, and other nonprofit insurance companies.
7. The right to buy insurance or qualify for coverage regardless of marital status.
8. The right to adequate health insurance coverage for all needs, including comprehensive maternity benefits for all conditions of pregnancy regardless of age or marital status.
9. The right to disability insurance which fairly measures the economic value of childcare and homemaking.
10. The right to privacy in the claims process.

In Pennsylvania, I have set up a task force on women's insurance problems to help deal with the problems discussed today. I expect its membership to tell me how to do a better job of eliminating sex discrimination in insurance. They will assist us in examining in detail women's complaints, underwriting practices, the availability of coverage, statistical data, and industry employment practices. Incidentally I have with me Marie Keeney, who is heading up this task force as our staff member.

The bill of rights I have presented will serve the task force as a guide in its efforts, and it will guide me in mine. I hope this committee will consider adopting it as a statement of principles to assist insurance companies, insurance commissioners, and other government bodies throughout the Nation to attack and solve the problems I have discussed today.

Thank you very much.

Representative GRIFFITHS. Thank you very much, Mr. Denenberg.  
[The prepared statement of Mr. Denenberg follows:]

PREPARED STATEMENT OF HON. HERBERT S. DENENBERG

The problem of sex discrimination in insurance has been serious, widespread, and up to now, largely ignored. As a result we have just begun to think about the problem. We are nowhere near its solution. So I would like to commend the Joint Economic Committee for including insurance in its investigation of economic discrimination against women.

Denial of equal access to insurance, at fair rates, affects the economic status of all women. It touches employment discrimination, opportunities to hold a job, ability to maintain a family in the face of personal catastrophe, and economic security. Other economic disadvantages of women can be magnified by discriminatory, inadequate, or prohibitively costly insurance. Alternatively,

insurance protection that serves women's needs can alleviate many economic burdens.

Today, I would like to describe how the sex classification system used by insurance companies has led to discrimination against women in the areas of underwriting, coverage, and rates. I am also going to discuss how their problems have been perpetrated and accentuated by the exclusion of women from the decision making processes of insurance companies. Finally, I will present some goals to work toward in solving these problems in the form of a Women's Insurance Bill of Rights.

Traditionally sex has been used as a distinguishing factor in insurance because it is a convenient, simple, and efficient way to divide people into risk categories that produce different loss potentials. In order to truly understand why sex has been used as a means of classification, it is necessary to look at the basic nature of the insurance industry.

The insurance industry is first and foremost a business trying to make a profit and protect itself against unanticipated losses. In order to protest against excessive losses, an insurance company attempts to distribute the potential losses of policyholders among all those who pay premiums. All policyholders do not pay the same premium, but are grouped into classifications insurers select in order to make each pay his "fair share" of losses. For example, older policyholders pay more when they buy life insurance than younger ones because they are likely to die sooner.

There is virtually no limit to the ways in which policyholders may be classified for rating purposes. An insurance company will generally settle for the easiest and most practical methods to separate those policyholders who suffer more losses from those who suffer fewer losses. Ideally, the classification characteristic must be one that can be practically and reliably ascertained and verified.

In making their choice of classification characteristics, insurance companies are generally content to make their choice without regard to public policy considerations other than the immediate economic needs of the insurance company.

With few exceptions, whatever classification system best reflects losses is most acceptable to the industry. In other words, the insurance industry's emphasis is actuarial and not social; it is economic and not humanitarian.

There are strong pressures to subdivide the insurance market with more and more classifications. But the essence of insurance is loss spreading—using the premiums of everyone to pay for those who suffer losses. Insurance can best achieve this loss spreading function if there are broad classifications and broad coverage. If classifications and coverage become too narrow, premiums may become prohibitive for many. Then only those most clearly exposed to the loss would buy the coverage. This process, called adverse selection, in turn drives premiums still higher as only the most loss prone are insured.

The insurance industry has traditionally established higher rates for one sex rather than the other whenever sex classifications produce significant loss or cost differentials (see the examples in Exhibit I). Women pay more for annuities, disability and medical and hospital expense insurance. Men pay more for auto insurance at younger ages and more for life insurance. Some kinds of insurance do not involve classifications based on sex—e.g., homeowners and title insurance.

In a competitive insurance market, however, there are difficulties in establishing insurance classifications that reflect public policy in addition to actuarial considerations. For example, if equal rates are to be charged policyholders with different loss potentials, at an average rate, insurers will have a strong incentive to sell only those individuals with the lower loss potential. Many would-be policyholders will find it difficult to obtain coverage.

Nonetheless, there are some convenient bases for classification which the insurance industry does not now use. One is color. Although blacks have a shorter life expectancy than whites, no classification based on color is used. Such a classification is considered to be unacceptable from a public policy standpoint.

Like classifications based on color, sex classifications have also become suspect. Pennsylvania, like some other states, has an equal rights amendment to its constitution. Hopefully, we'll have a similar amendment to the Federal constitution in the near future. The Federal Equal Employment Opportunity Commission has published guidelines that prohibit employees from offering unequal insurance benefits to male and female employees.

There is another reason sex has become a suspect classification. With changes in the economic position of women, the once homogenous classification of women has become less meaningful. It is clearly time to start to reevaluate all sex classifications of the insurance business.

## UNDERWRITING

Insurance by its very nature is selective and discriminatory. Every possible consideration—personal, moral, statistical and even whimsical—is taken into account in order to minimize the insurance risk. Underwriting is the process by which this is accomplished. It includes decisions on who is to get a policy, who is to be rejected or cancelled, and under what rules the policies are to be issued. Underwriting decisions are made by agents and brokers and by home office personnel called underwriters.

Companies want to write insurance only on those people who are least likely to have auto accidents, or will not be injured on the job, or have heart attacks, or die young, or suffer fire or theft. As one company told its underwriters: "Some of the worst auto risks there are may only have one accident in their lifetimes. We want to be sure that when it occurs, Reliance isn't covering the risk."<sup>1</sup> Need I say that from the policyholder's standpoint, the one time a person needs insurance is when that accident occurs.

Companies also try to minimize their potential loss when a claim goes to court. That's why they discriminate—sometimes rationally, sometimes irrationally—against anyone they feel might arouse the conscious or subconscious prejudices of a judge or jury. Divorced women, for example, often don't look good to underwriters from this standpoint.

Historically, underwriting in the insurance industry has been dominated by men and many policies were originally written for men.

One area in which these outdated and biased assumptions are most evident is in disability insurance. Disability insurance provides payments to replace income when the insured is unable to work due to illness, injury, or disease.

It is important to anyone who is self-supporting, who is the head of a household, or who is a major contributor to a family's economic status.

Insurance companies selling disability coverage don't seem to realize that, as of March 1972, half of the 33 million women working were single, separated, divorced, widowed, or had husbands earning less than \$3,000 a year.<sup>2</sup> These women have a substantial need for income protection. Underwriters, however, seem to assume that women don't need or want to work, so that disability pay would just be extra income for some woman who would really prefer to stay home with the house and children. They don't recognize that many working women have as much incentive to get back to work as working men.

Insurance companies sell disability insurance on the basis of age, sex, and occupational class. Jobs are divided into four or five broad occupational classifications by stability of work, hazards involved, and physical demands of the job. Premiums are lowest for people who have jobs classified in the most stable and least hazardous occupational group. This classification is an underwriting decision. Some companies, for example, classify lawyers and office workers—from the chief executive to the typists and file clerks—in the most preferred occupational group, along with a variety of other people they believe are in safe and stable jobs.

A man and a woman in the same occupational class and the same age should be able to buy the same disability income benefits. But this is where underwriting prejudice hurts women. Many companies restrict women to a benefit period of two to five years, while a man in the same occupational classification can buy coverage which pays benefits to age 65 or even for life.

Women, with jobs classified in the less desirable occupations from the standpoint of risk, may not be able to buy coverage at all, whereas men in the same occupational class may be restricted, but not excluded, from coverage. For example, Prudential's Disability Pay Guide, dated January 1973, tells agents that "waitresses" are generally unacceptable risks, but makes no such warning about "waiters."<sup>3</sup>

Insurers are also suspicious about women who work at home or who work for relatives. Some underwriting rules tell the agent that women in these types of work are "unacceptable risks,"<sup>4</sup> but don't say anything about men in the same

<sup>1</sup> "Reliance Insurance Company Private Passenger Automobile Underwriting Seminar," Auto—1057 Ed. 6/70, p. 31.

<sup>2</sup> U.S. Department of Labor, Women's Bureau, "The Myth and the Reality," (Government Printing Office, April 1973, p. 1).

<sup>3</sup> "Disability Pay Sales and Service Guide, Prudential Health Insurance," January 1973, pp. 26-27.

<sup>4</sup> *Ibid.*

situations. If a woman works for her husband, she probably can't buy disability insurance, but if her husband works for her, he's probably insurable.

Another example of differential treatment of women in disability insurance is the "reduction of benefits" provision found in policies sold to women, but not to men.<sup>5</sup> Benefits payable to a disabled woman may be subject to a 50 percent reduction if the woman isn't gainfully employed away from her residence immediately preceding a total disability. The woman might think she's paying for \$400 of monthly benefits and find she is only eligible for \$200 of benefits.

Insurance regulators should require companies to file underwriting manuals, agents' promotional materials, training guides, and related materials with state insurance departments. These must be reviewed for sexist content as much as the policies themselves. This is an important first step. Insurance regulators should also stop approving policies which have different benefits or underwriting rules for men and women.

#### COVERAGE

A second basic insurance problem is access to comprehensive coverage. Coverage must be available regardless of age, marital status, or the personal prejudice or myopia of the industry.

Women have found that insurance coverage is inadequate or totally unavailable in at least two areas: coverage for pregnancy and its complications, and coverage to replace childcare and homemaking services of women who do not have an income.

Medical expense insurance covers medical, hospital, and surgical costs. All women have a right to adequate medical expense coverage for all their needs, including comprehensive maternity benefits for all conditions of pregnancy. Comprehensive benefits should cover pregnancy, delivery, miscarriage, abortion, and all complications.

Adequate medical expense insurance coverage is particularly vital since most people don't shop around for it. For cost reasons, the best buy is usually insurance available through an employee group plan.

Inadequate pregnancy coverage takes different forms in different insurance plans. Generally we've found that Blue Cross and Blue Shield offer broader coverage than the commercial insurance carriers, but the range of benefits varies from group plan to group plan. Exhibit II shows a sample of maternity benefits in large employee group plans in Pennsylvania. These plans tend to provide more adequate benefits than smaller group and individual plans.

In some plans, particularly commercial health insurance, maternity expenses are subject to a flat maximum payment for both medical/surgical and hospitalization expenses. This flat maximum, (e.g. \$400.00) may be completely inadequate to pay the true cost of a normal childbirth. In the same plans, costs of other illnesses and injuries are reimbursed more flexibly.

In other plans, hospitalization for maternity may be limited to a certain number of days while most other illnesses and injuries are not limited. Medical/surgical benefits may cover only a small portion of the doctor's actual fee. The coverage provided, for example \$90.00, is generally inadequate to cover prenatal and postnatal doctor's visits. Such care is vital to infant and maternal health, and many obstetricians include a certain number of such visits in with their delivery charges. Yet pregnancy benefits are rarely adequate to cover such expenses.

Another problem is that maternity benefits are generally restricted to married couples enrolled in family plan contracts. In group plans, these benefits may be given to wives of male employees but not to all female workers, or only to women whose husbands are also enrolled in the same plan. The Equal Employment Opportunity Commission has ruled that this is a discriminatory employment practice,<sup>6</sup> but employers have not been quick to change their fringe benefit programs.<sup>7</sup> A lot of employers, including one in the chart in Exhibit II, exclude their unmarried female employees from maternity coverage. It is certainly reasonable for an unmarried woman to want the protection of maternity coverage. And she should have the right to obtain it.

Dependent female children also need full maternity coverage in medical insurance plans. It is not impossible to write such coverage. The Blue Cross/Blue

<sup>5</sup> Comparison of Monarch Life Insurance Company policies IC-70 and WIC-70.

<sup>6</sup> Equal Employment Opportunity Commission, Guidelines on Discrimination because of Sex, 29 CFR 1604.9.

<sup>7</sup> "Pregnancy: Firms aren't Toeing the Guidelines," *Daily News*, June 8, 1973, p. 9c.

Shield contract for employees of Bethlehem Steel in Pennsylvania, for example, covers the maternity expenses of unmarried dependent children under age 19, as does the Federal employees' insurance program.

Even adequate insurance coverage can be nullified by claims procedures which do not guarantee privacy. Women have complained to the Pennsylvania Insurance Department that they are afraid to put in claims for abortions through their employer plans, since they might get fired if their employers found out. Teachers are particularly worried about this. It may be more efficient for group plans to have their own claims administration, but the privacy of women must be protected. Insurance companies which don't take precautions to insure privacy about the nature of insurance claims may be helping employers to discriminate against women.

Pregnancy-related problems also arise in disability insurance. In medical expense insurance, pregnancy receives insufficient coverage; in disability insurance, it is excluded altogether. A typical disability policy excludes not only normal pregnancy but also all complications of pregnancy.

One reason given by insurers for these exclusions is that in their opinion, pregnancy is a planned event. Traditionally, insurance has been sold to protect against unplanned losses. Certainly not all pregnancies are planned and most certainly, complications of pregnancy are not planned. Companies also object to covering pregnancy disabilities because they are afraid women are more prone to malingering because they can rely on the income of their husbands. The statistics recited earlier on working women refute that. Working women must not be forced to choose between having a job and having a family. Disability insurance should help women to do both, and to do so, it must recognize the wage loss associated with pregnancy.

Providing full disability coverage for all income losses caused by every pregnancy raises some tough questions for two reasons. (1) How long a woman works before birth and when she returns afterwards are largely matters of personal choice; (2) the cost of full coverage would be high since disability coverage is not a widely sold type of coverage.

But there are changes that would be economically feasible as well as socially desirable. One would be to cover complications of pregnancy even if normal pregnancies were excluded.

Actuaries and obstetricians can determine the average pre and post birth disability periods for a normal delivery. That period of time, say three weeks, could then be designated as an elimination period for the application of disability benefits to pregnancy. Any woman whose pregnancy resulted in a medically ascertained disability beyond this elimination period would qualify for disability coverage.

Complete coverage also means that women who are homemakers should be able to buy disability insurance that fairly measures the economic value of childcare and homemaking. Traditionally, disability insurance has been sold only to income producers on the theory that there must be an income to replace and an incentive to work. But a homemaker also makes a real economic contribution. In addition to medical expense insurance, homemakers also need some sort of coverage to pay for replacing homemaking services, and childcare services as well.

Insurance companies say they can't determine the value of a homemaker's work. But a recent article in *Changing Times* discussed six different ways to calculate such contributions.<sup>8</sup> There have been plenty of court cases where a price was put on a homemaker's services—occasionally the woman turned out to be worth a lot more than her husband. It can't be all that difficult to figure out the cost of maid service, and live-in babysitters. Disability insurance for such services is generally not available, even though it's definitely needed. Companies should be responding to the demand for this type of insurance.

#### RATES

It is not enough to eliminate sexist underwriting practices and to make fuller coverage available, if women cannot afford to buy it. Unless we change our rating system as well, this is exactly the situation we will find ourselves in.

We have to find better ways to spread the cost and more equitably distribute the risk. One possible way to do so is by charging men and women equal insurance rates despite different loss experience—unisex rating.

<sup>8</sup> "What's a Housewife Worth," *Changing Times*, April 1973, pp. 11-13.

There are some obvious advantages to charging equal rates for men and women. Both sexes have to compete in the economic marketplace and should be able to do so on an equal basis. However, the practicality of unisex rating varies from one kind of insurance to another and should be considered separately in each case.

For instance, automobile insurance now involves different rates for men and women in the younger age categories. Men are charged more because they produce higher losses. The National Safety Council suggests the differences are due not to biological factors but to "the amount of driving done by members of each sex, and to differences in the time, place, and circumstances of the driving."

The factors which really cause the difference in losses can probably be sorted out, and can then be used to replace sex as classification factors. Unisex rating for automobile insurance would, therefore, be an attainable goal in the near future.

The field of medical expense insurance involves some different factors. There are biological differences that cause greater losses for women than men.

In the case of pregnancy, however, there are special reasons for spreading the cost of pregnancy to both sexes. After all, it is a shared endeavor of the sexes rather than solely a woman's experience. In fact, since most pregnancy coverage has been offered in family contracts covering both the husband and wife, the cost of pregnancy already is an insurance cost shared by both sexes. Thus the additional cost of pregnancy, especially when part of a comprehensive contract, should be small enough to permit unisex rating even if single women are included. Blue Cross and Blue Shield have generally offered the same rate for single males and females, and this approach would be feasible even with the addition of pregnancy coverage.

Disability coverage poses a more difficult problem as the loss experience of women, even with pregnancy costs excluded, may run two and a half times higher than costs for men. Because of such loss difference, a unisex rate would not be workable in the absence of some alternative classifications. These classifications should certainly be sought. Until then, the first priority should be to eliminate the discriminatory features of disability insurance that relate to coverage and underwriting, described before. As more disability coverage is sold to women and as further statistical information is gathered, it will become easier to find alternative methods of classification. The same general approach can be followed for life insurance and annuities.

Unisex rating could be imposed now, but it would probably create more problems than it would solve. If applied across the board, it might magnify rather than diminish the economic disadvantages now faced by women.

#### EMPLOYMENT AND DECISIONMAKING

Women do not have an impact in two areas which are closely related to the problems of insurance underwriting practices, insurance coverage and insurance rates. These two areas are employment in the industry itself and representation as members of boards of directors.

##### *Employment patterns in the industry*

The insurance industry, nationwide, is a major white collar employer of women. Of the 1.3 million people who reported working in the insurance industry in the 1970 Census, 48.3 percent were women.<sup>9</sup> But too few of these women are in positions where they could change discriminatory practices from within.

Exhibit III shows 1972 data on women workers in the industry by kind of insurance. Accident and health carriers, for example, had a work force that was 70 percent female. But where are these women workers? Exhibit IV tells the story, using figures supplied to the Equal Employment Opportunity Commission by industry employers in 1970. The overwhelming majority of female employees—85.7 percent—worked in office and clerical jobs. Compare this use of womanpower to the distribution of male workers in the industry. Less than 12 percent of all male workers were in office and clerical jobs. Among men, sales was the single largest concentration of workers: almost 30 percent of the male work force held sales jobs, compared to less than 2 percent of the female work force. Sales is a vital part of this industry, yet women were hardly represented in these jobs in 1970.

<sup>9</sup> U.S. Census of Population, 1970, PC (2), Occupation by Industry, Table 8. (Based on 20% sample.)

### *Representation among Decisionmakers*

Our experience indicates that the key to improving our insurance and health delivery institutions is consumer representation on boards and other governing bodies. This means representation by a broad cross-section of the community the institution is designed to serve. This means eligibility for board membership on the part of all members of the community, unless they are for good reason disqualified.

Women have often not been given access to insurance company boards, to Blue Cross-Blue Shield boards, to hospital boards, and to the governing bodies of the institutions that run our system.

Exhibit IV also shows the contrast between male and female representation at the policy-making level. Among the male half of the insurance work force, 23 percent were in jobs classified as officials and managers. Among women workers, less than 3 percent were in such jobs. Earnings data sheds further light on this situation. Census statistics for Pennsylvania indicated that women insurance workers in 1969 had median earnings that were less than half that of men's earnings—\$4,803 for women compared to \$10,203 for men. Women in policy-making positions can also be indicated by median income in the industry. In Pennsylvania, only 416 of 30,000 women insurance workers reported earning over \$10,000 in 1969, while 18,000 of the 38,000 male insurance workers earned above \$10,000 that year.<sup>10</sup>

Representation on insurance company boards of directors is another area where women suffer from lack of access to the system. Exhibit V shows the male and female representation among the top officers and directors of the five leading insurance companies in Pennsylvania in life, accident and health, and automobile insurance. Representation of women is token, at best. Each of the top five life companies has only one woman among 40 or more top officers and directors. Two of the accident and health companies and four of the five automobile companies have no women at all in these policy-making positions.

Women are no better off in the nonprofit plans. In Pennsylvania, there are only two women on the 151 member corporation which oversees Blue Shield. There are no women at all on the 27-member board of directors of Pennsylvania Blue Shield. Not only are there no women, there are not even any obstetricians and gynecologists.

How can women get their problems aired if they can't get into decision making positions? Why aren't there more women on these boards? You can't tell me that women aren't as qualified to direct a major company as the ten male farmers and ex-farmers who dominate the Board of Directors of one of Nationwide's companies. No offense to farmers. Companies, by their employment practices in the home office and the agent's offices are showing women just what they think of them. Discriminatory coverage, sales, benefits, and underwriting practices are just a logical extension of that state of mind.

#### INSURANCE BILL OF RIGHTS

This has been a sketch of the problems of sex discrimination in insurance. Solutions are, of course, more difficult—particularly when, as in this area, the problems themselves are just being recognized and the raw data just being collected.

So rather than present today a detailed list of needed reforms in this area, I think it better to outline instead the goals and principles we should aim toward. What we need now—and what I would like to present—is a "Women's Insurance Bill of Rights," outlining the minimum rights women should be granted as insurance policyholders and employees.

<sup>10</sup> *U.S. Census of Population, 1970, PC (1) D40, Detailed Characteristic, Pennsylvania Tables 188 and 189.*

The rights are as follows:

1. The right to equal access to all types of insurance.
2. The right to premiums that fairly reflect risks and not prejudice.
3. The right to protection against arbitrary classification based on sex, and against sex classification when other bases which might be appropriate have not been utilized or even explored.
4. The right to equal employment opportunities in the insurance industry and its regulatory agencies, and to a fair share of scholarships and financial assistance for the study of insurance.
5. The right to non-sexist and non-judgmental treatment by agents, brokers, claims representatives and all others who deal directly with policyholders.
6. The right to representation on the decision-making boards of commercial insurance companies, Blue Cross plans and other nonprofit insurers.
7. The right to buy insurance or qualify for coverage regardless of marital status.
8. The right to adequate health insurance coverage for all needs, including comprehensive maternity benefits for all conditions of pregnancy regardless of age or marital status.
9. The right to disability insurance which fairly measures the economic value of childcare and homemaking.
10. The right to privacy in the claims process.

#### THE PENNSYLVANIA TASK FORCE

In Pennsylvania, I have set up a task force on Women's Insurance Problems to help deal with the problems discussed today. I expect its membership to tell me how to do a better job of eliminating sex discrimination in insurance. They will assist us in examining in detail women's complaints, underwriting practices, the availability of coverage, statistical data, and industry employment practices.

The Bill of Rights I have presented will serve the Task Force as a guide in its efforts, and it will guide me in mine. I hope this Committee will consider adopting it as a statement of principles to assist insurance companies, insurance commissioners, and other government bodies throughout the nation to attack and solve the problems I have discussed today.

#### EXHIBIT 1

COMPARISON OF INDIVIDUAL INSURANCE RATES FOR A MAN AND WOMAN LIVING IN PHILADELPHIA, AGES 23 AND 45

Line of insurance and description of policy	Rate at age 23		Rate at age 45	
	Male	Female	Male	Female
Automobile: 10/20/5, \$1,000 medical payment uninsured motorist, \$50 deductible comprehensive, \$100 deductible collision.....	\$858.00	\$411.00	\$382.00	\$344.00
Life: \$10,000 whole life.....	168.70	161.60	332.60	307.20
Basic health: \$30 per day, \$600 ancillary, \$600 fee schedule.....	121.93	170.89	169.90	204.10
Major medical: \$500 deductible, 80/20 co-pay, \$10,000 benefit.....	53.89	68.08	91.59	99.25
Income disability: \$200 per month, 5 years indemnity, 4-week elimination.....	56.60	106.00	99.60	174.40
Total.....	1,259.12	917.57	1,075.69	1,128.95

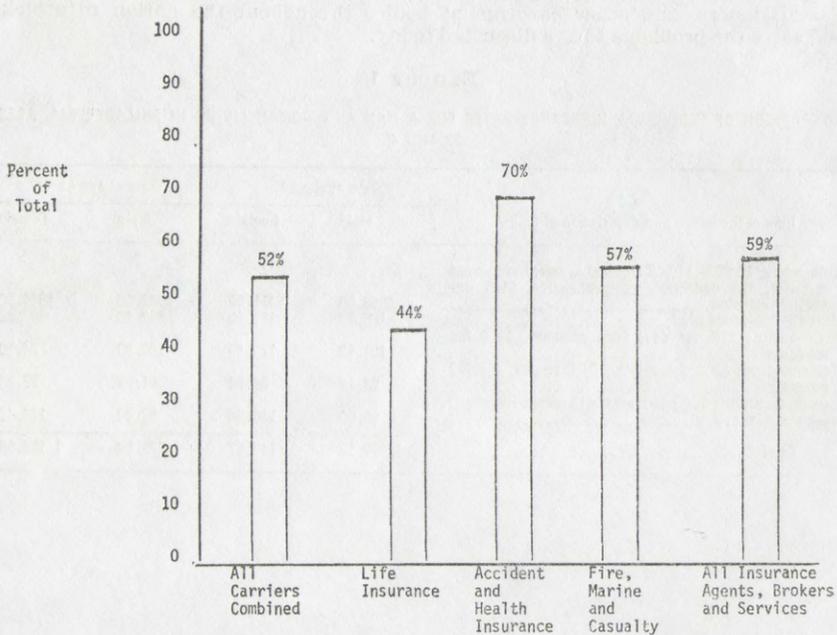
EXHIBIT 2

MATERNITY BENEFITS IN GROUP HEALTH INSURANCE PLANS  
SAMPLED EMPLOYERS IN PENNSYLVANIA

	U.S. Government (Aetna)	Commonwealth of Pennsylvania	Westinghouse	Bethlehem Steel	INA	School district of Philadelphia
9-month waiting period	No.....	Yes.....	Yes.....	Yes.....	Yes.....	Yes.....
Flat payment or special reimbursement.	No—Same as for other illness or injury.	Yes—10 days hospital, \$90 OB.	No—Same as for other illness or injury.	No—Same as for other illness or injury.	Yes—\$400 normal delivery, \$200 miscarriage \$600 caesarian	Yes—6 days hospital, \$90 OB.
Coverage for pregnant dependent children.	Yes.....	No.....	No.....	Yes.....	No.....	No.
Available to single women.	Yes.....	Yes.....	Yes.....	Yes.....	Yes.....	No—Available to husband and wife on family plan only.
Separate charge for maternity benefits.	No.....	No.....	No.....	No.....	Must enroll in family plan.	No.
Coverage for legal abortions.	Yes.....	Yes.....	Yes.....	Yes.....	Yes.....	Yes.

EXHIBIT 3

FEMALE EMPLOYMENT BY TYPE OF INSURANCE

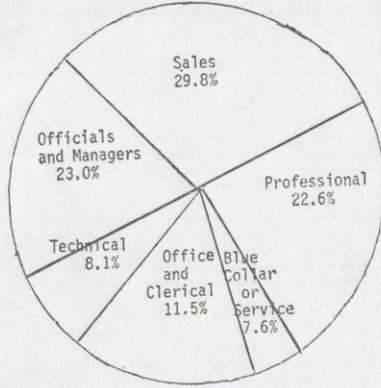


Source: Employment and Earnings, (U.S. Bureau of Labor Statistics), Vol. 19, No. 9 March 1973, Table B-3, 1972 averages.

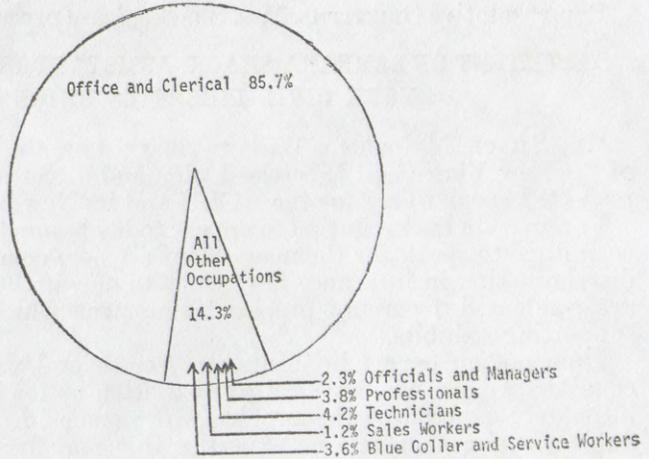
EXHIBIT 4

INSURANCE INDUSTRY EMPLOYMENT BY OCCUPATIONAL CLASSIFICATION

Male Employees



Female Employees



Source: U.S. Equal Employment Opportunity Commission, Job Patterns for Minorities and Women in Private Industry, Vol. 1, 1970, p. 515.

## EXHIBIT 5

## WOMEN EXECUTIVE OFFICERS AND DIRECTORS OF MAJOR INSURANCE CARRIERS IN PENNSYLVANIA

Company	Total officers and directors	Number of women
<b>Life:</b>		
1. Prudential.....	54	1
2. Metropolitan Life.....	76	1
3. Equitable Life.....	50	1
4. John Hancock Life.....	44	1
5. New York Life.....	44	1
<b>Accident and health:</b>		
1. Continental Casualty (CNA).....	54	0
2. Colonial Penn Franklin.....	15	0
3. National Casualty.....	22	1
4. Columbia Accident & Health.....	7	2
5. Nationwide Life.....	73	4
<b>Automobile:</b>		
1. State Farm Mutual.....	22	0
2. Nationwide Mutual.....	73	4
3. Allstate.....	24	0
4. Erie Insurance Exchange.....	26	0
5. Aetna Casualty & Surety.....	26	0

Source: 1972 annual report of the companies.

Representative GRIFFITHS. Mrs. Shack, please proceed.

**STATEMENT OF BARBARA SHACK, ASSISTANT DIRECTOR, NEW YORK CIVIL LIBERTIES UNION**

Mrs. SHACK. My name is Barbara Shack. I am the assistant director of the New York Civil Liberties Union and direct its women's rights project. I speak today for the ACLU and its New York affiliate.

I appreciate the invitation to appear today before this distinguished committee to speak for the many women whose complaints about sex discrimination in insurance have come to our attention. My remarks are condensed from my prepared statement which includes many supporting exhibits.

I am not an expert in insurance. For several years, through the countless women who have called or written us for help, I have been intimately exposed to the problems of women in our society. I lay dubious claim to whatever expertise this may have afforded.

Charles K. Cox, president of the Insurance Company of North America, at a recent conference of insurance legislators in San Francisco said:

It is the responsive quality of their product that makes insurance companies socially responsible. The basic principle of insurance—preserving life and property—makes it the backbone of our economy.

I submit today that the insurance industry on its own, and in conspiracy with employers has systematically discriminated against women, falling in their self-proclaimed social responsibility and depriving women and their families of the economic security promised.

You have heard a lot of statistics through these hearings. I will repeat a few. Forty percent of all women over age 16 hold jobs representing about 38 percent of the work force. Forty-one percent of these women are single, widowed, divorced, or separated and another 21 percent have husbands whose income is less than \$7,000. So for 20 million women and their families, health care costs and loss of earn-

ings could mean financial disaster. However, their incomes, property, and health care cannot be insured on the same basis as a man.

From my experience it is clear that the same myths and assumptions that create the prevailing discrimination in all our institutions operate to deprive women of the protection that equitable and humane insurance practices should provide. My testimony today attempts to examine these assumptions and myths; illustrate how insurance practices influence, reflect, and perpetuate them, and finally suggest some remedies.

The most invidious attitude that affects women's access to equal insurance is the assumption that a woman's anatomy is her own destiny and that the risks inherent in childbearing are not an insurable interest. The insurance world mirrors the societal view that when a woman becomes pregnant, she makes a choice for which she is solely responsible and for which she alone should suffer the disabilities. Conversely, I suggest that because women serve the biological function of continuing the species, society should share the disabilities and costs instead of penalizing her for her necessary physiological role.

Another prevailing attitude is that women are only temporary members of the work force, dependent on a male primary wage earner, burdened with home responsibilities that cause her to feign sickness so she can collect insurance benefits, or poised to have a litter and retire as the happy homemaker, duping her employer and the insurance companies out of benefits intended for regular members of the work force.

For example, the underwriting manual of the North America Re-Insurance Co. advises that:

Women's role in the commercial world (is) a provisional one . . . they work not for financial need, but for personal convenience. The subjective circumstances which create "convenience" tend to change, and if a woman has disability coverage, the temptation exists to replace her earnings with an insurance income once work loses its attractiveness.

This manual reflects the attitude of the insurance industry as evidenced in their marketing practices. It is mind boggling that the industry has failed to notice that women have changed since 1890 when they represented 4.5 percent of the work force. Women now represent 38 percent of all labor and the majority contribute an essential part of the family income and clearly have insurable interests.

Metropolitan Life Insurance Co.'s manual contains this advice to employers, warning that hiring females may result in above-average claim cost:

Some married women are willing to accept a loss of income periodically rather than face up to the hardships of working full time and caring for their homes and families.

Metropolitan Life increases the premiums on group health policies "if the benefits on females represent 11 percent or more of the total benefits." Well, their policy is that if the benefits on females represent 11 percent or more of the total benefits, the total premium for the group goes up. Most insurance companies as mentioned load their premium rates depending on the percentage of women employed.

So the advice to employees and the extra premium for females is a clear warning that hiring women is hazardous and expensive. The

probable impact on hiring practices is obvious and contributes to the continuing vicious cycle that deprives them of equal opportunity.

I would like to mention the major insurance deprivations women suffer. I will be repeating a little bit and I will try to condense it.

Until recently disability income protection policies have not been available to most women. Such policies when they are available, contain exclusions, riders, and waivers not present in policies for males and cost as much as 150 percent more; almost universally exclude payment for any disability arising in connection with pregnancy; and a significant number exclude disabilities arising from "organs peculiar to females."

Many insurance companies routinely deny coverage to women employed by a relative, or jointly in business with their husbands. Most companies restrict the benefit period for women to 2 years while men can usually obtain policies that offer 5 to 10 years of coverage for disability.

For example, I have attached as an exhibit to my prepared statement a copy of correspondence between a woman insurance consumer, who was outraged, contacted her Congressman who wrote to the Travelers Insurance Co. vice president—and the Civil Liberties Union was in the middle of the correspondence—in which Richard A. Leggett, the Travelers Insurance Co. vice president, defines the distinction the Travelers makes between male and female coverage as follows:

Total disability for males means the inability to perform the duties of his occupation for 60 months, after that it means the inability to perform the duties of any occupation. Females are charged a higher premium and are covered for 24 months after which they are expected to perform the duties of any occupation.

In the absurd this would mean that a female neurosurgeon with failing eyesight would be expected after 2 years to perform the duties of a chambermaid, while a similar male would receive coverage for 5 years.

Travelers also excludes pregnancy as a cause of disability. Mr. Leggett justifies this exclusion by saying "Since pregnancy is normally intentional we do not view this as insurable."

I have attached to my prepared statement complaints about other policies that provide unequal benefits and I will be happy to respond to questions about them.

Most health and hospital insurance plans exempt or limit the coverage of many medical conditions exclusive to women, including pregnancy, or gynecological disorders and related conditions. Yet coverage for exclusively male problems like prostate disorders is routinely provided.

I had a letter recently from a woman complaining that her New York Blue Cross-Blue Shield policy provides full coverage for almost every medical condition, but for a pregnancy only a flat \$80. I quote from her letter:

When will the insurance industry wake up and realize that having a baby is not the time to go to the hospital for a four day fun holiday, but a hospital stay that is very necessary for the new mother and the infant. If men, who run the insurance companies and most other things, were the ones to bear the children, the world would be a very different place.

I think she is far more eloquent than I have been.

In the area of life insurance, women pay more than they should for individual policies. The practice in the industry is to charge females the same rate as males who are 3 years younger. The available mortality data indicates that women live 6 to 9 years longer than men—yet their life insurance rates are only discounted by 3 years.

So it appears that in the one area of insurance where women should benefit from favorable actuarial data, they have been arbitrarily taxed by unjustified premiums.

John A. Durkin, former insurance commissioner of the State of New Hampshire before the Senate Committee on Antitrust and Monopoly in February 1972, pointed out that when insurance companies sell annuities to females, they use age setbacks from 5 to 7 years. He concludes that "where it is to the life insurance company's advantage to use the full differential of say about 6 years, they do it—where it isn't, they don't." And finally he says, "It is about time the life insurance companies give female policyholders the break they deserve."

In the area of social security insurance, women suffer a little-known inequity. Males who are entitled to old-age and disability pensions may automatically receive dependency benefits for an uncovered wife. Females on the other hand must show that they were contributing more than half of their husband's support at the time of retirement in order to qualify for dependency benefits for the husband. Here again, the woman's contribution to an insurance plan buys lower benefits than a man who makes the identical contribution.

In automobile insurance, I have had dozens of complaints, mostly from women who after divorce cannot buy automobile insurance or find that their rates go up substantially. I have some letters of complaint that provide all the gory details. If you would like to hear them, I will be happy to share them with you.

Most people in the workforce are covered through insurance plans partially or wholly paid for by the employers as fringe benefits in addition to salary. In 1970, private insurance companies reaped \$5 billion from such policies. When women do not receive the same benefits as men, they are in fact receiving less than equal pay for equal work.

Evidence of the scope of discrimination in employer insurance plans is being gathered by the New York State Division on Human Rights.

The division under the supervision of Assistant Commissioner Dorothy Orr has surveyed the 50 largest corporations in New York State to determine whether there is unlawful discrimination based on sex in group health and life insurance practices. Forty-seven employers have cooperated so far. I have with me, attached as an exhibit to my prepared statement, a statement of the preliminary results prepared by the State division for presentation to this committee today. I will briefly summarize these findings:

Based on preliminary data the commission has already concluded that discrimination against female employees exists in each plan, and cites that the following practices are the rule rather than the exception:

1. Female employees are not permitted to include husbands in medical and surgical benefit plans unless they are retired or disabled.

However, under the same plan male employees are permitted to include their wives.

2. There is a failure to provide maternity benefits to female employees on the same terms and conditions as to the spouse of male employees. For example, in one of the State's largest companies, female employees receive maternity benefits amounting to a flat rate of 5 days of hospital care and maximum cash benefits of \$300 for surgical and medical expenses. The very same plan permits wives of male employees up to 10 days of hospital care and a maximum of \$1,000 medical costs.

3. Four out of five plans so far reviewed provide benefit payments and continued health coverage for all nonoccupational disabilities for males but exclude disability payment benefits due to pregnancy or pregnancy related conditions.

The division will enlarge the scope of its inquiry to include most large employers in the State and will provide this committee with the tabulated results when completed.

The insurance industry has justified higher premiums and less coverage for women by alluding to their secret actuarial tables. I am not an actuary. I concede that it probably is true that women have more disabilities associated with pregnancy than men do, which accounts for most but not all of the higher utilization by women.

However, some of the following data seriously contradict prevailing insurance premiums which are as much as 150 percent higher for women.

Public Health Service surveys indicate that men and women lose almost the same amount of time from work due to acute disabilities, including childbirth and complications of pregnancy. In 1968 men averaged 5.2 days per year and women 5.9; in 1971 the figures were 5.1 days for men and 5.2 days for women.

In 1970, 5.3 men per thousand received disability benefits under social security and only 3.9 women per thousand. That statistic is slightly loaded and it is more complicated than it appears on its face but I submit it as part of the picture.

Thirteen insurance companies contributed experience to a survey of disability insurance experience for the 1965-69 period. The survey indicated that after a 3-month elimination period there were 5.09 disabled males per thousand and 5.27 females disabled per thousand.

Yet the Guardian Life Insurance Co. charges females almost three times the premium that males pay for disability income with that same 3-month elimination period.

Whether or not there are refined actuarial data showing that women are higher risks than men—the data I have presented indicates that it could not support the premium differentials of 50 to 150 percent that now exist for women.

What are the possible remedies? Title VII of the Civil Rights Act of 1964 and some State laws prohibit discrimination in employer insurance plans. However, employers and insurance companies continue to concoct plans that willfully violate the title VII provisions. Enforcement is tedious, on a case-by-case basis and left to generally unaggressive State agencies or the EEOC, an understaffed, under-budgeted agency that generally has a 2-year backlog.

However, even if we were successful in compelling employers to provide full and equal benefits for women in most cases employers would have to pay the costs and one can only imagine how dramatically women's rates would rise when you consider the inflated premiums now charged for women. Employers would be so heavily taxed for the percentage of women they employ that they may be reluctant to hire women.

There are no Federal laws and to my knowledge almost no State laws that prohibit or control the discriminatory practices and premiums I have mentioned. The McCarran-Ferguson Act of 1945 exempts the insurance industry from Federal antitrust laws and leaves regulation entirely to the States. State insurance departments—present company excluded—have been negligently lax in insuring fair treatment for women and are usually handicapped by the lack of legislative authority. Several States, including New York, prohibit race, but not sex classifications in establishing of insurance policies and premiums.

Congress has already recognized that equal employment opportunity is a fundamental right and has prohibited sex discrimination by the Government and private employers. Good health and guaranteed security are also fundamental rights and should not be conditioned on sex.

Federal legislation could readily succeed where private practice and State regulation have failed to guarantee women equal protection from insurance.

This legislation should prohibit the sale of any insurance policy, or the establishment of any insurance plan that excludes sex-related disabilities and medical care, or offers unequal terms and conditions of coverage based on sex.

And finally, in order to guarantee equal rates for men and women, this legislation should prohibit the use of sex-based risk classifications for establishing insurance premiums. Only in this way can we insure that the risks involved in being born female are shared by the society they serve.

Thank you.

Representative GRIFFITHS. Thank you very much.

[The prepared statement of Mrs. Shack follows:]

PREPARED STATEMENT OF BARBARA SHACK

My name is Barbara Shack. I am the Assistant Director of the New York Civil Liberties Union and direct its Women's Rights Project. I speak today for the ACLU and its New York affiliate.

I appreciate the invitation to appear today before this distinguished committee because it gives me the opportunity to speak for the many women whose complaints about sex discrimination in insurance have come to our attention.

I am not an expert in insurance. For several years, through the countless women who have called or written us for help, I have been intimately exposed to the problems of women in our society. I lay dubious claim to whatever expertise this may have afforded.

From my experience it is clear that the same myths and assumptions that create the prevailing discrimination in all our institutions operate to deprive women of the protection that equitable and humane insurance practices should provide. My testimony today attempts to examine these assumptions and myths; illustrate how insurance practices influence, reflect and perpetuate them, and finally suggest some remedies.

The most invidious attitude that affects women's access to equal insurance is the assumption that a woman's anatomy is her own destiny and that the risks inherent in childbearing are not an insurable interest. The insurance world

mirrors the societal view that when a woman becomes pregnant, she makes a choice for which she is solely responsible and for which she alone should suffer the disabilities. Conversely, I suggest that because women serve the biological function of continuing the species, society should share the disabilities and costs instead of penalizing her for her necessary physiological role.

Another prevailing attitude is that women are only temporary members of the workforce, dependent on a male primary wage earner, burdened with home responsibilities that cause her to feign sickness so she can collect insurance benefits—or poised to have a litter and retire as the happy homemaker—duping her employer and the insurance companies out of benefits intended for regular members of the workforce.

For example, the underwriting manual of the North American ReAssurance Company advises that “women’s role in the commercial world [is] a provisional one . . . they work not from financial need, but for personal convenience. The subjective circumstances which create “convenience” tend to change, and if a woman has disability coverage, the temptation exists to replace her earnings with an insurance income once work loses its attractiveness.”<sup>1</sup>

This manual reflects the attitude of the insurance industry as evidenced in their marketing practices. It is mind boggling that the industry has failed to notice that women have changed since 1890 when they represented 4.5% of the workforce. Women now represent 38% of all labor and the majority contribute an essential part of the family income and clearly have insurable interests.

The Metropolitan Life Insurance Company’s manual contains this advice to employers:

“Hiring procedures for female employees deserve special attention. Studies of Weekly Indemnity (loss of time) claim experience have definitely pointed to the fact that married women are, under certain circumstances, responsible for above-average claim costs and other serious problems connected with excessive absenteeism. Very often these problems are related to home responsibilities which were not looked into at the time of hiring. Family relations, the number of children in the family, provision for care of the children while the mother is at work, and transportation arrangements for getting to and from work are important considerations which may directly affect both the employee’s attendance record and job performance. Because of income tax advantages, Weekly Indemnity benefits may be very close to normal take-home pay. Some employees who must arrange for the care of their children during working hours, may actually be better off financially if they can collect insurance benefits. Some married women are willing to accept a loss of income periodically rather than face up to the hardships of working full time and caring for their homes and families.”

Metropolitan Life increases the premiums on group health policies “if the benefits on females represent 11% or more of the total benefits.”

The advice to employers and the extra premium for females is a clear warning that hiring women is hazardous and expensive. The probable impact on hiring practices is obvious and contributes to the continuing vicious cycle that deprives them of equal opportunity.

Charles K. Cox, President of the Insurance Company of North America, at a recent conference of insurance legislators in San Francisco said, “It is the responsive quality of their product that makes insurance companies socially responsible. The basic principle of insurance—preserving life and property—makes it the backbone of our economy.”

I submit today that the insurance industry on its own, and in conspiracy with employers has systematically discriminated against women, failing in their self-proclaimed social responsibility and depriving women and their families of the economic security promised.

There are more than 1200 health and accident writers in the country. Two-thirds of the population is covered by health policies purchased by or through management or labor groups. Of the 8 billion dollars paid in group policy premiums in 1970, two-thirds was paid by employers. Insurance is estimated to be a 12 billion dollar industry.

Forty percent of all women over age 16 hold jobs representing about 38% of the workforce. Forty-one percent of these women are single, widowed, divorced

<sup>1</sup> Confidential sales and underwriting manuals were subpoenaed by the Senate Antitrust and Monopoly Subcommittee hearing held in May and June 1972. Quotations from these manuals were obtained from the record of those hearings and from an article in *MS Magazine*, May 1973, *Insured Except In Case of War, Suicide, and Organs Peculiar to Females*, by Susan Stoiber.

or separated and another 21 percent have husbands whose income is less than \$7,000. So for 20 million women and their families, health care costs and loss of earnings could mean financial disaster. However, their incomes, property and health care cannot be insured on the same basis as a man.

First, I would like to mention the major insurance deprivations women suffer. Until recently disability income protection policies have not even been available to women except in California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico, where government-sponsored temporary disability insurance systems exist. When they are available, they contain exclusions, riders, and waivers not present in policies for males and cost as much as 150 percent more. Such policies when available almost universally exclude payment for any disability arising in connection with pregnancy, childbirth, miscarriage and abortion and a significant number exclude disabilities arising from "organs peculiar to females."

Many insurance companies routinely deny coverage to women employed by a relative, or jointly in business with their husbands. Most companies restrict the benefit period for women to two years while men can usually obtain policies that offer five to ten years of coverage for disability.

About a month ago, the Circuit Court of Appeals for the Ninth Circuit struck down as unconstitutional the California Insurance Code which exempts pregnancy-related work loss from the coverage of the state disability insurance program.<sup>2</sup> The four plaintiffs in the case provided the sole support for their families, each had a life saving operation to terminate abnormal pregnancies and suffered from four to eight weeks disability and income loss. The court held that it is a violation of equal protection for the insurance program to exclude female sex related disabilities from coverage.

While this decision is a major breakthrough and may ultimately overturn similar restrictions in the other four states which mandate income protection—it does not help women in the other 45 states or women who buy private policies.

For example, I have attached as *Exhibit I*<sup>3</sup> a copy of the correspondence between a woman insurance consumer, Congressman Edward Koch and the Travelers Insurance Company Vice President, Richard A. Leggett, in which Mr. Leggett states that Travelers makes the following distinctions between male and female coverage:

"Total disability for males means the inability to perform the duties of his occupation for 60 months, after that it means the inability to perform the duties of any occupation. Females are charged a higher premium and are covered for only 24 months after which they are expected to perform the duties of any occupation."

This would mean that a female neurosurgeon with failing eyesight would be expected after two years to perform the duties of a chamber maid, while a similar male would receive coverage for five years.

The policy also reduces the indemnity rate by 50 percent for any female who is employed at her place of residence at the time of disability.

Pregnancy is excluded as a cause of disability. Mr. Leggett justifies this exclusion by saying "Since pregnancy is normally intentional we do not view this as insurable."

Kathleen Cooper, a young woman employed at Kolmar Laboratories in Port Jervis, New York, is insured under an employee group disability plan with Liberty Mutual. She recently suffered a tubal pregnancy which required life saving surgery and six weeks recuperation. Her claim for disability was denied because it arose in connection with a pregnancy. See *Exhibit II* attached.

Ms. Elaine L. Weiss, a self-employed housing consultant obtained a disability policy from the Guardian Life Insurance Company of America which provided two years of indemnity payments for a premium of \$430.00 per annum. A male friend of similar age and occupation was able to buy five years of protection for a premium of \$217.20. Ms. Weiss's policy also contained a pregnancy exclusion and reduces her benefits to 60 percent if she is employed at home. *Exhibit III* attached.

Most health and hospital insurance plans exempt or limit the coverage of many medical conditions exclusive to women, including pregnancy, or gynecological disorders and "related conditions." Yet coverage for exclusively male problems like prostate disorders is routinely provided.

<sup>2</sup> Aiello v. Hansen, No. C-72-140SW, Armendarez v. Hansen, No. C-72-1547SW.

<sup>3</sup> Names of individuals have been deleted from the Exhibits to protect their privacy.

I had a letter recently from a woman complaining that her New York Blue-Cross-Shield policy provides full coverage up to 21 days in the hospital for almost every medical condition, but for a pregnancy only a flat \$80 with no coverage, for the hospital stay, anesthesia, medication or nursery costs. I quote from her letter. "When will the insurance industry wake up and realize that having a baby is not the time to go to the hospital for a four day fun holiday, but a hospital stay that is very necessary for the new mother and the infant. If men, who run the insurance companies and most other things, were the ones to bear the children, the world would be a very different place!" See *Exhibit IV* attached.

I think she is far more eloquent than I have been.

Most of the inequity in medical and disability coverage is a result of agreement between employers and insurance companies to formulate plans that cost less. Surely it costs less to provide women with partial coverage instead of full coverage. Until recently no one even objected. Now not only women, but men are recognizing that this inequity affects the pocketbook of the entire family.

#### LIFE INSURANCE

In the area of life insurance, women pay more than they should for individual policies. The practice in the industry is to charge females the same rate as males who are three years younger. The available mortality data indicates that women live 6 to 9 years longer than men—yet their life insurance rates are only discounted by three years. The 1971 Edition of the Statistical Abstract of the United States indicates the mortality rate by sex as follows:

Male age (1)	Mortality rate per 1,000 (2)	Female age with same mortality rate (3)	Difference in years (4)
30	1.67	38.1	8.1
35	2.21	41.2	6.2
40	3.43	47.0	7.0
45	5.59	52.9	7.9
50	9.30	58.4	8.4
55	14.97	64.0	9.0

So it appears that in the one area of insurance where women should benefit from favorable actuarial data, they have been arbitrarily taxed by unjustified premiums.

John A. Durkin, former Insurance Commissioner of the State of New Hampshire before the Senate Committee on Antitrust and Monopoly in February 1972, pointed out that when insurance companies sell annuities to females, they use age setbacks from 5 to 7 years. He concludes that "where it is to the life insurance company's advantage to use the full differential of, say about six years, they do it—where it isn't, they don't." And finally he says "It's about time the life insurance companies give female policyholders the break they deserve." See Mr. Durkin's testimony, attached *Exhibit V*.

In the area of Social Security insurance, women suffer a little-known inequity. Males who are entitled to old-age and disability pensions may automatically receive dependency benefits for an uncovered wife. Females on the other hand must show that they were contributing more than half of their husbands' support at the time of retirement in order to qualify for dependency benefits for the husband. Here again, the woman's contribution to an insurance plan buys lower benefits than a man who makes the identical contribution.

In automobile insurance, I've had dozens of complaints, mostly from women who after divorce cannot buy automobile insurance or find that their rates go up substantially.

Attached as *Exhibit VI* is a letter to the National Organization for Women from a high salaried woman whose husband transferred ownership of one of the family cars to her after divorce. Allstate, which previously insured the family and continued to insure her husband's car, informed her she could only be insured as an "assigned risk." She was forced to transfer the car's ownership back to her ex-husband and get coverage under his name. Mr. Bob Miskelly at the home office of Allstate is reviewing the problem at my request and assures me

that Allstate has no policy which treats divorced women differently. However, many underwriting manuals advise agents to beware of divorced persons because they are likely to be emotionally unstable and poor insurance risks. The Continental Insurance Company's Underwriting Manual contains the following language:

"Marriage is the normal state for mature adults. Nevertheless, we regard the single female, age 21 and over, as an average risk. Actually, the new class plan provides a preferential rate for the unmarried female, ages 30 to 64 when she is the only driver in the household. The unmarried male is a different story.

"The divorced or separated male is, in our opinion, more undesirable than the man who has never married. The same is true in comparing the divorcee and the unmarried female. Some divorced persons are the innocent victims of circumstances. Others are divorced because they are emotionally unstable. That is almost surely to be the situation with the person who has been divorced twice. We should leave him or her alone."

From my experience, it appears that brokers and agents apply these guidelines mostly to divorced women.

Most people in the workforce are covered through insurance plans partially or wholly paid for by the employers as fringe benefits in addition to salary. In 1970, private insurance companies reaped 5 billion dollars from such policies. When women do not receive the same benefits as men, they are in fact receiving less than equal pay for equal work.

Evidence of the scope of discrimination in employer insurance plans is being gathered by the New York State Division on Human Rights.

The Division under the supervision of Assistant Commissioner Dorothy Orr has surveyed the 50 largest corporations in New York State to determine whether there is unlawful discrimination based on sex in group health and life insurance practices. Forty-seven employers have cooperated so far. I have with me, attached as *Exhibit VII*, a statement of the preliminary results prepared by the State Division for presentation to this committee today. I'll briefly summarize these findings:

Based on preliminary data, the median number of employees is between 13,000 and 14,000 employees. Women comprise about 31 percent of the total workforce of these 47 firms as compared with 40 percent in the total state labor force.

The commission has already concluded that discrimination against female employees exists in each plan, and cites that the following practices are the rule rather than the exception:

(1) Female employees are not permitted to include husbands in medical and surgical benefit plans unless they are retired or disabled. However, under the same plan male employees are permitted to include their wives.

(2) There is a failure to provide maternity benefits to female employees on the same terms and conditions as to the spouse of male employees. For example, in one of the State's largest companies, female employees receive maternity benefits amounting to a flat rate of five days of hospital care and maximum cash benefits of \$300 for surgical and medical expenses. The very same plan permits wives of male employees up to 10 days of hospital care and a maximum of \$1,000 medical costs.

(3) Four out of five plans so far reviewed provide benefit payments and continued health coverage for all non-occupational disabilities for males but exclude disability payment benefits due to pregnancy or pregnancy related conditions.

One large retail firm provides disability payments to male employees ranging from half to full normal weekly earnings and extending for as long as one year for all non-occupational disabilities certified by the company doctor. Female employees who undergo medical and/or surgical procedures indigenous to females are paid no benefits.

(4) Some of the employer plans do not provide medical and surgical care and costs for legal abortion and others limit such coverage to the married female living with the husband.

The Division will enlarge the scope of its inquiry to include most large employers in the state and will provide this committee with the tabulated results when completed.

The insurance industry has justified higher premiums and less coverage for women by alluding to their secret actuarial tables. I am not an actuary. I concede that it is probably true that women have more disabilities associated with pregnancy than men do, which accounts for most but not all of the higher utilization by women.

However, some of the following data seriously contradict prevailing insurance premiums which are as much as 150 percent higher for women.

Public Health Service Surveys indicate that men and women lose almost the same amount of time from work due to acute disabilities, including childbirth and complications of pregnancy. In 1968 men averaged 5.2 days per year and women 5.9; in 1967 the figures were 5.3 and 5.6 days per year; in 1971 the figures were 5.1 days for men and 5.2 days for women.

In 1970, 5.3 men per thousand received disability benefits under Social Security and only 3.9 women per thousand.

Thirteen insurance companies contributed experience to a survey of disability insurance experience for the years 1965-1969. Reported in the *Transactions of Society of Actuaries 1971 Report of Mortality and Morbidity Experience* the survey indicated that after a three-month elimination period there were 5.09 disabled males per thousand and 5.27 females disabled per thousand. After a six-month elimination period there were 2.98 males per thousand and 3.49 females disabled. (See tables, *Exhibit VIII* attached)

Yet the Guardian Life Insurance Company charges females almost three times the premium that males pay for disability income with three or six-month elimination periods. *Exhibit IX*.

Below are examples of disability income protection available to men and women age 30 in the lowest risk classification with a 14 day elimination period.

ANNUAL PREMIUM FOR \$100 PER WEEK BENEFIT

	Men	Women
Aetna Casualty & Life.....	\$39.70	\$58.70 <sup>(1)</sup>
Standard Security.....	(1)	(1)
Guardian Life.....	26.20	52.45

<sup>1</sup> 50 percent higher for women.

Whether or not there are refined actuarial data showing that women are higher risks than men—the data I have presented indicates that such data could not support the premium differentials of 50 to 150 percent that now exist for women.

What are the possible remedies? Title VII of the Civil Rights Act of 1965 (see *Exhibit X*) and some state laws prohibit discrimination in employer insurance plans. However, employers and insurance companies continue to concoct plans that willfully violate the Title VII provisions. Enforcement is tedious, on a case by case basis and left to generally unaggressive state agencies or the EEOC, an understaffed, under-budgeted agency that generally has a two-year backlog.

However, even if we were successful in compelling employers to provide full and equal benefits for women, they would have to pay the costs and one can only imagine how dramatically women's rates would rise when you consider the inflated premiums now charged for women. Employers would be so heavily taxed for the percentage of women they employ that they may be reluctant to hire women.

There are no federal laws and to my knowledge almost no state laws that prohibit or control the discriminatory practices and premiums I have mentioned. The McCarran-Ferguson Act of 1945 exempts the insurance industry from federal antitrust laws and leaves regulation entirely to the states. State insurance departments have been negligently lax in insuring fair treatment for women and are usually handicapped by the lack of legislative authority. Several states, including New York, prohibit race, but not sex classifications in the establishing of insurance policies and premiums.

Congress has already recognized that equal employment opportunity is a fundamental right and has prohibited sex discrimination by the government and private employers. Good health and guaranteed security are also fundamental rights and should not be conditioned on sex.

Federal legislation could readily succeed where private practice and state regulation have failed to guarantee women equal protection from insurance.

This legislation should prohibit the sale of any insurance policy, or the establishment of any insurance plan that excludes sex-related disabilities and medical care, or offers unequal terms and conditions of coverage based on sex.

Further this legislation should prohibit sex-based risk classifications for establishing insurance premium rates. This would guarantee equal rates for men and women, and insure that the risks involved in being born female are shared by the society they serve.

## EXHIBIT I-1

NEW YORK, N.Y., July 26, 1972.

Representative EDWARD I. KOCH,  
*Longworth House Office Building,*  
*Washington, D.C.*

DEAR CONGRESSMAN KOCH: Thank you so much for replying to my answer to your recent questionnaire. In it, I had indicated to you that I believed I had experienced discrimination at the hands of an insurance company when I took out an income protection policy a year ago. You were kind enough to ask me to give you details on this. They follow herewith.

The company is Travelers Insurance Companies, Hartford, Conn. (although a lot of other companies may be doing this too for all I know). The policy I took out covers me for life in the case of a disabling accident. However, I was told that as far as illness is concerned, I could only be covered for a maximum of five years. A man, on the other hand, taking out the same policy and paying about the same premium, could be covered for life.

Why is this? My insurance agent told me that the company reasoned that a married woman might well "fake" a disabling illness in order to collect the insurance, and would be able to do this because in any case she would be being supported by her husband.

I declined to discuss the absurdity of this argument, but when I pointed out to my agent that there were many women, like myself, who were not married and were their own sole support (a situation in which adequate income protection insurance is even more important than for a married man whose wife presumably could pitch in, in emergency situations), his answer was even less satisfactory.

There are not enough women in this situation, he said, to make it worthwhile for an insurance company to amend their point of view and thus issue equitable policies to both sexes.

I am very glad that you are interested in this situation. Discrimination against women in the area of insurance, it seems to me, has hardly been looked into (although I don't know how widespread that discrimination is). I have begun looking for another policy, one that will protect me adequately, and I must say, my agent seems to be having a hard time finding one.

Sincerely yours,

## EXHIBIT I-2

CONGRESS OF THE UNITED STATES,  
 HOUSE OF REPRESENTATIVES,  
*Washington, D.C., August 9, 1972.*

\_\_\_\_\_  
*New York, N.Y.*

DEAR MS. \_\_\_\_\_: A note to thank you for your letter of July 26th. I appreciate having your information on the Travelers Insurance Company. I have written to the president of the company about the distinctions it makes between men and women in determining the availability of benefits. When I receive a response I will be in touch with you again about what further action can be taken.

Sincerely,

EDWARD I. KOCH.

## EXHIBIT I-3

CONGRESS OF THE UNITED STATES,  
 HOUSE OF REPRESENTATIVES,  
*Washington, D.C., November 6, 1972.*

\_\_\_\_\_  
*New York, N.Y.*

DEAR MS. \_\_\_\_\_: I apologize for my delay in forwarding to you a copy of the response I received from Travelers Insurance Company on the matter of sex discrimination in their insurance policies.

In his letter, Mr. Leggett bears out your information on discrimination against women in the company's "Red Umbrella" series of guaranteed renewable dis-

ability insurance policies. On the other hand, Mr. Leggett indicates that these "policy forms" will be withdrawn next year when the company's non-cancellable program is broadened—a program which when broadened is supposed to make no distinctions on the basis of sex. While the future seems to promise some improvements, it remains to be seen whether indeed the broadened program does not discriminate on the basis of sex—you will note that Mr. Leggett contends that the Red Umbrella series' exclusion of women in the "to age 65" sickness coverage is not "a distinction based solely on sex." And yet, they automatically place women in the "uncertain career status" category.

I will keep in touch with Travelers on this, and it is my hope that next year the Congress can make a comprehensive study of sex discrimination in insurance policies.

If you have any comments on Mr. Leggett's letter in the context of your own experience, I would be interested in them.

Sincerely,

EDWARD I. KOCH.

EXHIBIT I-4

THE TRAVELERS INSURANCE COMPANIES,  
September 12, 1972.

EDWARD I. KOCH,  
17th District, New York, Congress of the United States, House of Representatives,  
Washington, D.C.

DEAR MR. KOCH: I am answering your letter of August 9 to Mr. Beach, President of The Travelers. I'm sorry that this reply has been delayed. You asked us to comment on the distinctions we make between males and females in providing disability coverage.

Our individual disability income forms fall into three main categories, based on their renewal provisions. I will discuss each separately.

#### *Non-Cancellable Policy Forms*

In 1971 we introduced the Select Circle series of non-cancellable disability income policies. Currently these are available only to male applicants in the better occupational classifications. Sometime next year we plan to broaden this program to females and to males in the less favorable occupational classifications. We plan to make no distinction on the basis of sex with regard to the coverage available.

#### *Guaranteed Renewable Policy Forms*

In 1965 we introduced the Red Umbrella series of guaranteed renewable disability income policies. Coverage is available to a female risk for a sickness indemnity period of 60 months only when such risk is engaged in a permanent career-type occupation. Both male and female risks can purchase lifetime accident coverage. In addition, males in the better occupational classifications can purchase "to age 65" sickness coverage. Otherwise, we make no underwriting distinction between males and females. Even here, we don't view this as a distinction based solely on sex. A male applicant of uncertain career status would not be permitted a long sickness indemnity period. If a person is not regularly employed outside of the home, it is often difficult to determine whether disability exists.

There are three coverage distinctions made between males and females for this policy series. The definition of what constitutes total disability differs slightly between males and females. For males, total disability during the first 60 months of disability means the inability to perform the duties of his occupation. After that it means the inability to perform the duties of any occupation. For females, the definition of total disability is the same as for males except for the substitution of 24 months for 60 months. Pregnancy is excluded as a cause of

disability. In addition, if a female insured is not in gainful occupation or employment on a full-time basis away from her place of residence at the commencement of total disability, the monthly indemnity rate is automatically reduced by 50%.

We plan to withdraw these policy forms from sale next year at the time our non-cancellable program is broadened.

#### *Cancellable Policy Forms*

In 1971 we introduced the ESS disability policy for salary deduction business. This policy form does not cover any loss caused by pregnancy, childbirth or miscarriage. It makes no other coverage distinctions between the sexes. The only underwriting distinction by sex is that, as with the guaranteed renewable policy forms, a female applicant is limited to a sickness indemnity period of 60 months.

The principal problem in designing disability coverages and in underwriting applicants for that coverage is to be certain of a continuing insurable interest. Since pregnancy is normally intentional, we do not view this as insurable. The other distinctions we make between the sexes arise because of the greater likelihood of a woman choosing to terminate employment in order to stay home and devote her attention to her family. Our group long term disability income forms generally make no distinction in coverage between males and females except that pregnancy is excluded as a cause of disability. If the employer requests lifetime disability coverage, both the male and female employees have this lifetime benefit limit.

You also ask whether our health insurance policies cover the costs of abortions. For individual insurance forms:

If the policy provides maternity coverage, we pay for voluntary abortions under the maternity portion of the coverage and to the extent allowed by the law of the insured's state of residence. For example, if the state does not permit voluntary abortions, we would not make payment. If the state permits voluntary abortions but only within the first 24 weeks, we would make payment only for an abortion occurring within that period.

If the policy does not provide maternity coverage, we would pay for only therapeutic abortions. In the case of forceable or statutory rape, we would pay under the accident portion of the coverage, which would be equal to or greater than the sickness portion of the coverage. In the case of an abortion performed because of an illness which in conjunction with the pregnancy endangers the life of the mother, we would pay under the sickness portion of the coverage. Here again we pay only to the extent allowed by the law of the insured's state of residence.

For group insurance forms the procedure followed is generally the same as for individual insurance forms.

If you want additional information, we will be pleased to comply.

Sincerely,

R. A. LEGGETT.

#### EXHIBIT II

MATAMORAS, PA., *June 25, 1973.*

CIVIL LIBERTIES UNION,  
New York, N.Y.

*To whom it may Concern:*

I have called about this situation and was told that if I were to send this copy of my rejection, you people may be able to help me. I feel that this is discrimination and that pregnancy should not be a factor of whether or not I can collect disability benefits.

I do not want to disrupt but I do want to disprove this unfair ruling.

Thanking you for any help you may be able to give me.

Sincerely,

KATHY COOPER.

ALBANY 12204 BIRCHAMTON 13901 BUFFALO 14203 HEMPSTEAD 11550 NEW YORK 10007 ROCHESTER 14614 SYRACUSE 13202  
 1949 North Broadway 221 Washington St. State Office Building 125 Main St. 175 Fulton Ave. 50 Park Place 155 Main St. W. State Office Building East Washington St.

STATE OF NEW YORK  
 WORKMEN'S COMPENSATION BOARD

OFFICE AT

Albany

Social Security No. XXXXXXXXXX	Date of Hearing 6/4/73	Claimed First Date of Disability 9/23/72
Carrier Code 098	Carrier File No. GR807-779#62	Date of This Notice June 11, 1973
Claimant Kathleen Cooper Riverside Estates Matamoras, Pennsylvania 18336		
Employer Kolmar Labs Inc. Port Jervis New York		
Carrier Liberty Mutual Ins. Co. 34 Haight Ave. Poughkeepsie, NY		

**NOTICE OF DECISION**  
 DISABILITY BENEFITS

## TO THE CLAIMANT:

1. Any Disability Benefits due will be sent to you by check by the insurance carrier, employer, or the Special Fund for Disability Benefits.
2. Keep a careful record of the payments received so that you may have evidence of payment or non-payment in case of dispute.
3. Do not pay money to anyone representing you. The fee, if any, for such representation is determined by the Board or Referee and will be deducted from your award and paid by the employer or his insurance carrier to your representative or attorney.

## TO ALL INTERESTED PARTIES:

You have the right to appeal this decision, within 30 days from the date of this notice, by writing to the Board, at the office indicated above stating the grounds for your appeal and requesting a review of the decision.

DECISION: You are hereby notified that after hearing on date stated above a Decision and Award was made and duly filed this day as follows:

Claim arose in connection with pregnancy. Claim denied.

Case closed.

AWARD:..... IS HEREBY DIRECTED TO PAY  
 TO:.....  
 for the period from..... to..... at the rate  
 of \$..... per week less payments made covering this period.  
 CLAIMANT'S ATTORNEY..... ADDRESS.....  
 as lien on award payable by separate check, the sum of \$.....  
 FEE TO DOCTOR..... ADDRESS.....  
 for attendance at hearing, \$.....

DE-375 (1-68)

*E. L. Weiss*  
 Chairman

## EXHIBIT III

E. L. WEISS ASSOCIATES,  
 New York, N.Y., August 4, 1972.

Ms. BARBARA SHACK,  
 New York Civil Liberties,  
 New York, N.Y.

DEAR Ms. SHACK: As a result of our telephone conversation of July 19, 1972, I am sending you copies of my disability insurance policy and that of my accountant, both taken out at the same time. The insurance company is Guardian Life. As I explained to you, this was one of the few companies which offer a disability policy to a woman.

They will not, however, offer the modified five-year plan to a woman, regardless of the premium paid. As you can see, the premium for \_\_\_\_\_ for the modified five-year disability plan is only \$217.20. My premium on the two-year disability policy is \$430.00. For a regular five-year disability plan, I would have had

to pay more than \$600. Mr. Colchamiro and I are of comparable age and occupation.

My insurance broker, Mr. \_\_\_\_\_, tried to get the modified five-year plan for me and was refused. Mr. \_\_\_\_\_ and his broker also tried to obtain it for me. They, likewise, were told that this plan was not offered to women.

Also of note is that included in the policy (the two-year plan) is a Female Insured Rider. According to this, only 60% of benefits are payable upon termination of regular employment; i.e., working less than thirty hours per week outside one's home.

I hope this information is sufficient to establish a case of discrimination against women. If you wish any further information, please contact me.

Very truly yours,

ELAINE L. WEISS,  
*Housing Consultant.*

FEMALE INSURED RIDER

REDUCTION UPON TERMINATION OF REGULAR EMPLOYMENT

If, on the date of commencement of a period of disability for which (after the applicable elimination period if any) monthly indemnity shall be payable under this Policy, the Insured shall not be engaged full time (at least four days a week with a minimum of thirty hours of work) in an occupation or employment off the premises on which her home is situated, then the said monthly indemnity shall not be payable at the rate specified elsewhere in this Policy, but at the percentage of such rate shown below. If the Policy contains benefits for partial disability as well as total disability, the percentage will apply equally to the benefits for total disability and for partial disability.

Percentage of disability benefits payable after termination of regular employment—60%.

PREGNANCY EXCLUSION

This Policy shall not cover any loss caused or contributed to by the pregnancy of the Insured.

This Rider is issued for attachment to and forms a part of the Policy to which it is attached. Nothing herein contained shall vary, alter or extend any provision of the Policy except as herein stated.

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA  
WILLIAM J. BURRELL,  
*Secretary.*

Accepted:

ELAINE L. WEISS,  
*Insured.*

Countersigned (where required) by:

\_\_\_\_\_  
*Duly Licensed Resident Agent.*

Examined by:

E. PISONI,  
*Registrar.*

Form No. AR 71-65.

EXHIBIT IV

QUEENS VILLAGE, N.Y., February 23, 1973.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,  
*Federal Plaza,  
New York N.Y.*

DEAR SIR: Regarding the enclosed article from the Long Island Press of February 22, 1973 on pregnancy and discrimination, please note that Blue Cross definitely discriminates against the pregnant woman and her unborn child. Any hospital stay is paid in full for the first 21 days, be it heart surgery, tonsillectomy or anything else.

If a woman decides to have an abortion and thereby kill the life of her unborn child, Blue Cross condones this and pays in full. Also in a miscarriage, they pay in full.

For a normal maternity stay, Blue Cross pays \$80, not even the cost of one day in the hospital. They pay nothing toward the necessary medication,

anesthesia or nursery costs involved, only \$80, a figure that has been in effect for years even though hospital costs have doubled and their rates have gone up tremendously every year. Unless you are very rich or very poor and become pregnant, either you have an abortion or save every dollar for the nine months, because there is no hospitalization for maternity.

When will the insurance companies wake up and realize that having a baby is not a time to go to the hospital for a four day fun holiday, but a hospital stay that is very necessary for the new mother and for the infant.

If men, who run insurance companies and most other things, were the ones to bear the children, the world would be a very different place.

Very truly yours,

(Mrs.) MARGARET GEARY.

#### EXHIBIT V

(Excerpted from the Statement of Commissioner John A. Durkin, Insurance Commissioner of the State of New Hampshire, before the U.S. Senate Subcommittee on Antitrust and Monopoly, Feb. 22, 1973)

#### FEMALE DISCRIMINATION IN LIFE INSURANCE

As might be expected from a business run almost exclusively by males, females are discriminated against in the rates charged them for individual life insurance policies. Simply stated, they pay more than they should.

The predominant practice in the life insurance industry is to charge females the same rates males who are three years younger pay. For example, the rate for a female age 43 would be the same as for a male age 40 (assuming the same plan of insurance and premium paying period).

In fact, the setback for females should be not three years, but at least twice that—six years! At the young adult ages, say 15 to 35 when males tend to do themselves in on the highways, the differential should be even more pronounced.

The justification for this assertion can be proven in a number of ways:

(1) *U.S. Population Mortality.*—The 1971 Edition of the Statistical Abstract of the United States gives mortality rates by age, race and sex. From this table the following can be derived:

Male age (1)	Mortality rate per 1,000 (2)	Female age with same mortality rate (3)	Difference in years (4)
30.....	1.67	38.1	8.1
35.....	2.21	41.2	6.2
40.....	3.43	47.0	7.0
45.....	5.59	52.9	7.9
50.....	9.30	58.4	8.4
55.....	14.97	64.0	9.0

(2) *Life Insurance Mortality.*—The most recent intercompany mortality tables are known as the 1955-1960 Basic Tables. These tables appear in the Transactions, Society of Actuaries, 1962 Reports Number. Yearly mortality studies use these tables as the basis for detecting trends in the mortality of persons insured under individual policies. The reduction in years for females based on the Ultimate Basic Tables is as follows:

Male age	Female age	Differential in years
30.....	34.2	4.2
35.....	39.3	4.3
40.....	44.1	4.1
45.....	50.4	5.4
50.....	57.4	7.4
55.....	63.2	8.2
60.....	67.4	7.4
65.....	70.6	5.6

A more elaborate analysis is to look at actual experience for the ten years between 1960 and 1970 as found in the Society of Actuaries Transactions, 1966 Reports of Mortality and Morbidity Experience, page 16, and 1971 Reports of Mortality and Morbidity, page 21. The results are:

Male age <sup>1</sup>	Weighted ratio of female to male mortality	Female differential corresponding to ratios in column (2)
(1)	(2)	(3)
37	69.6	8.0
42	66.1	3.9
47	65.7	3.3
52	56.4	5.7
57	50.4	7.4
62	51.5	6.9
67	50.9	7.4
72	56.7	6.9
77	58.8	6.6

<sup>1</sup> The ages below are the midpoints of quinquennial age brackets used in the studies.

It should be pointed out that mortality differentials become increasingly important financially with increasing age. Thus, one would observe that a conservative differential in age between males and females, based on the foregoing experience would be six years.

#### *Historical Development of Life Insurance Rate Differentials by Sex*

Until the late 1950's, the rates charged females were the same as males, although it was well known that female mortality was lower. For example, in 1957, an actuary, Mr. L. S. Norman, commented that female mortality was 60% of male mortality.

The rationalization for not giving females a break prior to that time was that they bought smaller policies and the extra administrative expenses incurred on such policies were an offset to the lower female mortality. (There was also some evidence that lapse rates were lower for females which, in turn, ought to have been an offset to higher per policy expenses.)

In any event, in the late 1950's the life insurance industry began to offer quantity discounts on individual life insurance policies. That is, the rate per \$1,000 decreased as the amount of insurance increased. Inasmuch as this development destroyed the rationale for female rates being the same as males—the new rates structure automatically charged more per \$1,000 for smaller policies, male or female—companies began to charge females a lower rate.

The female "discount" took the form, in almost all cases, of a three year age setback; e.g., a female 43 got a rate for a male age 40.

We have searched the actuarial literature to find the source of the three year differential. Apparently, it was mainly arbitrary. Certainly, the mortality statistics showed a much different pattern.

We did find one reference in 1956 by W. D. Kidwell to the effect that one reinsurance company was reducing the female age by three years for rating purposes. Perhaps this is where the three year setback got started.

In any event, the practice persists to this day and, to our knowledge, no company has come forward to lower female rates in this age of equal rights for women.

When these same companies sell annuities to females, they use much sharper pencils. The age setbacks, according to our information, are from five to seven years.

In short, where it is to the life insurance companies' advantage to use the full differential of, say, six years, they do it. Where it isn't, they don't.

Jack Benny is now hawking life insurance for a midwestern company. We noted the Company's brochure gives females a 10% discount. It ought to be at least 20% and more at the young adult ages.

It's about time the life insurance companies give female policyholders the break they deserve.

## EXHIBIT VI

OCTOBER 31, 1972.

Ms. CAROLE DESARAM,  
c/o NOW,  
New York, N.Y.

DEAR Ms. DESARAM: After reading the article in Glamour concerning credit, I'd like to cite my experience with Allstate Insurance Company.

During the five years I was married, my husband and I (or so I thought) were insured by Allstate for both automobiles (in his name, of course) as well as giving them all our other insurance amounting to approximately \$600 in premiums per year. After the divorce my ex-husband signed one car over to me and I attempted to put the insurance for it in my name. Naturally I called my Allstate agent, only to find out that I would have to be put in "assigned risk and then they only really preferred to insure me if my parents (?!?) had insurance with them. Since I was no longer "wife," I was without insurance!!

The thing that makes me maddest is the fact that they never refused to take a payment from me—on my checks!! I had juggled all the finances and worked the entire time I was married. Today, I am struggling to obtain credit in my own name. And it took me six weeks to finally get the proper insurance for my car. Of course I did the only thing I could do until I obtained the insurance—I signed my new car over to my ex-husband, insured it in his name and then cancelled the insurance when I finally got my own. As far as I know, Allstate has never refunded the premium for the balance of my insurance. If they did they sent it to my ex-husband—after I paid the premium!!!

Today I am determined to establish credit for myself and never will I use any other name but the one I have now—even if I do remarry and then only after I find out if my new credit and rights will be jeopardized!

Very truly yours,

P.S.—I'm 28, have worked for 10 years and now earn approximately \$20,000 per year (double what my ex-husband earned) maybe this year I'll be considered a good risk.

## EXHIBIT VII

NEW YORK STATE DIVISION OF HUMAN RIGHTS, STATEMENT TO THE CONGRESSIONAL JOINT ECONOMIC COMMITTEE HEARING ON SEX DISCRIMINATION

The New York State Division of Human Rights is concerned with the unlawful discrimination based on sex in group health insurance policies and programs for women of the labor force in the State of New York. Employers, unions, insurance companies, medical and hospital care associations bear responsibility.

Discriminatory practices affect thousands of women. They include all women who are white as well as those from racial and ethnic minority groups and make up more than 2.9 million or 38.8% of the total labor force in N.Y. State.

The discrimination deprives women employees of their rights to equality coverage of insurance as it relates to cost, leave time, monetary reimbursement, and the hospital and surgical benefits for all illnesses including pregnancy related problems on the same basis as male employees and their spouses.

The dual standards which are a part of most insurance plans for female employees is a reflection of the continuation of a tradition and attitude which relegates women workers to a second class citizenship in the labor force. The discrimination further indirectly deprives children and families since a large proportion of female employees are heads of households or are working to supplement the incomes of their husbands.

The discrepancy between coverage of spouses of male employees and female employees both penalizes and implements a cultural bias for which there is no legal rationale.

The New York State Human Rights Law has prohibited discrimination based on sex by employers in the terms, conditions, and privileges of employment. The assumption of liability, partial or full, for group health insurance programs for employees, is a substantial element of the terms, conditions, and privileges of employment. For the employer to provide disparate rights and privileges in its group health insurance programs based on the sex of the employee, is a violation of the law.

Likewise, as the Human Rights prohibits the aiding and abetting of any of the acts forbidden by law, the insurance companies and medical and hospital care associations which contract with employers bear legal responsibility to write only such contracts for services as are in compliance with the law.

The New York State Division of Human Rights is committed to the implementation of the law and has moved to maximize its authority through the enforcement and voluntary affirmative action process.

Hundreds of women and organizations throughout the State have either filed complaints of alleged discrimination in health insurance coverage programs or expressed their expectation that the New York State Division take steps to remedy the discriminatory practices which make their coverage unequal and/or different to male employees and/or the spouses of male employees.

The New York State Division processed through the Legal Bureau a number of complaints and has rendered some *decisions* and issued orders after hearings which are considered *landmark* and *precedent* setting in their overall remedy for all women throughout the State.

The orders after hearing, in a number of cases involve sex discrimination in employment fringe benefits including *maternity* leave and *health insurance*.

On June 25, 1973, the Appellate Division of the State Supreme Court affirmed orders issued by the Division declaring the maternity leave policies of two school districts to be discriminatory against female public school teachers. This constituted the *first expression* of approval by the New York State courts of the principle that employers must treat pregnancy in the *same manner* as other types of temporary physical disabilities. Consequently, pregnant employees now must be allowed to continue working as long as they are physically capable of performing their duties; to return to work as soon as they are physically able to resume their duties; and are entitled to the same sick benefits for the period of disability as other employees receive for other types of temporary physical disabilities.

The Division has also obtained judicial approval of a Division order declaring it to be an *unlawful discriminatory practice for an employer to establish an insurance program for its employees under which maternity insurance benefits were payable only on account of dependent wives of male employees, and not for women employed by the company.*

The Division is currently awaiting a judicial decision on another Division order holding that, not only must the employer provide the same maternity benefits for its pregnant employees as it provides for the wives of male employees, *but also that it must provide the same health insurance coverage for women employees on maternity leave as it provides for employees on other types of physical disability leave.*

The New York State Division of Human Rights in keeping with its authority has undertaken a survey of fifty of the largest corporations in the State of New York in order to objectify and validate the extensiveness and kinds of insurance coverage programs.

The preliminary findings suggest that there is widespread discrimination in insurance programs provided by corporations and by insurance companies for their own female employees.

The findings of discrimination tend to include the following areas:

1. Eligibility for maternity benefits is limited to the wife of the male employee; or frequently is not available on an equal basis for female employees.

(a) One large corporation provides for coverage for pregnancy only in the instance of a multiple birth.

(b) (At issue such cases are both personal coverage for female employee and dependent coverage for the child born. The AHS contract provides, in Article IV-B, that hospital service for newborn children shall be provided "only under Family contracts.")

2. Benefits are provided for non-occupational disabilities, but disabilities or illnesses due to pregnancy are excluded from hospital and surgical coverage, such as ectopic pregnancy, caesarians, abortions and spontaneous miscarriage.

3. Maternity leave policies are different from other leave policies and *limit the amount of leave time*; set arbitrary rules for the point at which maternity leave must begin, as well as their terms and time of return or reinstatement after the pregnancy.

In a number of the largest companies, under the terms of insurance coverage, female employees who became pregnant receive a flat rate of 5 days of hospital care and maximum cash benefits of \$300 for surgical and medical expenses. The

very same plan permitted to the wives of male employees up to 10 days of hospital care and a maximum of \$1,000 for surgical and medical costs.

4. Exclusion of disability payment benefits due to pregnancy and pregnancy-related benefits for female employees while benefit payments and continued health insurance for non-occupational disabilities for male employees are provided for all employees.

One large retail firm provides disability payments to male employees ranging from half to full normal weekly earnings, and extending for as long as one year for all non-occupational disabilities certified by the company doctor. In sharp contrast, female employees who undergo medical and/or surgical procedures indigenous to females are paid no benefits.

In other companies where such benefits are provided to female employees the maximum amount any plan offered was half the weekly earnings and limited to a period of six weeks.

5. Dependent coverage is limited to the wife of the male employee, and is not available on an equal basis to the husband of the female employee.

(a) There is no limitation included for duplicate coverage for the wife of the male employee, but there is such a limitation on duplicate coverage for the husband of the female employee.

(b) Dependent coverage for the husband of the female employee is available only if he is disabled or dependent, whereas, there is no similar condition placed on dependent coverage for the wife of the male employee.

Illustrative of this disparity is the fact that some plans do not permit a working female to include her husband as a dependent unless he is retired or disabled. Where husband and wife are both employed the husband can list his wife as a dependent under his employer's plan, particularly if the medical and surgical benefits are better than those provided by his wife's employer. However, if the wife's employer provides better medical and surgical benefits she cannot include a working husband as a dependent since such benefits are limited to a disabled or retired husband.

Following full analysis of the findings, it is the plan of the Division of Human Rights of the State of New York to take steps to effect remedy of the discriminatory practices of insurance coverage based on sex for the women of the State of New York.

#### EXHIBIT VIII

TABLE 1.—GROUP LONG-TERM DISABILITY INSURANCE, CRUDE RATES OF DISABLEMENT PER 1,000 LIVES EXPOSED (6-MONTH ELIMINATION PERIOD; CALENDAR YEAR OF ISSUE EXCLUDED), CALENDAR YEARS OF EXPERIENCE 1965-69, ALL EXPERIENCE UNITS COMBINED

Attained age	Life years exposed	Number of claims	Rate of disablement per 1,000 lives
All experience: males, females, and sex unknown:			
Under 40.....	953,742	774	0.81
40 to 44.....	291,160	574	1.97
45 to 49.....	256,488	862	3.36
50 to 54.....	198,314	1,138	5.74
55 to 59.....	146,441	1,451	9.91
60 to 64.....	91,214	1,444	15.83
All ages.....	1,937,359	6,243	3.22
Male experience only:			
Under 40.....	315,989	196	0.62
40 to 44.....	100,959	157	1.56
45 to 49.....	86,750	259	2.98
50 to 54.....	66,824	361	5.40
55 to 59.....	50,680	458	9.04
60 to 64.....	30,638	510	16.65
All ages.....	651,880	1,941	2.98
Female experience only:			
Under 40.....	87,223	76	0.87
40 to 44.....	24,132	78	3.23
45 to 49.....	23,039	111	4.82
50 to 54.....	17,824	120	6.73
55 to 59.....	13,409	106	7.91
60 to 64.....	7,287	113	15.51
All ages.....	172,914	604	3.49

Note: Transactions of Society of Actuaries 1971 Report of Mortality and Morbidity Experience.

TABLE 2.—GROUP LONG-TERM DISABILITY INSURANCE, CRUDE RATES OF DISABLEMENT PER 1,000 LIVES EXPOSED (3-MONTH ELIMINATION PERIOD; CALENDAR YEAR OF ISSUE EXCLUDED), CALENDAR YEARS OF EXPERIENCE 1965-69, ALL EXPERIENCE UNITS COMBINED

Attained age	Life years exposed	Number of claims	Rate of disablement per 1,000 lives
All experience: makes, females, and sex unknown:			
Under 40.....	157,933	288	1.82
40 to 44.....	48,238	152	3.15
45 to 49.....	43,556	249	5.72
50 to 54.....	35,391	282	7.97
55 to 59.....	28,410	360	12.67
60 to 64.....	17,779	336	18.90
All ages.....	331,307	1,667	5.03
Male experience only:			
Under 40.....	75,874	140	1.85
40 to 44.....	25,124	73	2.91
45 to 49.....	22,188	218	5.77
50 to 54.....	17,558	145	8.26
55 to 59.....	13,742	179	13.03
60 to 64.....	8,583	165	19.22
All ages.....	163,069	830	5.09
Female experience only:			
Under 40.....	22,647	64	2.83
40 to 44.....	5,445	27	4.96
45 to 49.....	5,461	31	5.68
50 to 54.....	4,677	41	8.77
55 to 59.....	3,988	38	9.53
60 to 64.....	2,338	34	14.54
All ages.....	44,556	235	5.27

Note: Transactions of Society of Actuaries 1971 Report of Mortality and Morbidity Experience.

### EXHIBIT IX

#### 1 YEAR SICKNESS AND ACCIDENT NONCANCELLABLE DISABILITY INCOME<sup>1</sup>

#### PARTICIPATING ANNUAL PREMIUM RATES, \$100 MONTHLY INDEMNITY, OCCUPATIONAL CLASS 5A (EXECUTIVE)

Age at issue	Elimination periods (sickness and accident)						
	7 days	14 days	30 days	2 months	3 months	6 months	1 year
MEN							
18 to 25.....	\$32.41	\$25.08	\$14.76	\$9.84	\$7.73	\$5.56	\$4.65
26.....	32.56	25.27	14.98	10.07	7.95	5.74	4.82
27.....	32.72	25.49	15.24	10.31	8.17	5.94	4.98
28.....	32.91	25.74	15.51	10.57	8.41	6.15	5.16
29.....	33.11	25.98	15.80	10.85	8.68	6.36	5.36
30.....	33.28	26.20	16.08	11.12	8.92	6.56	5.53
WOMEN							
18 to 25.....		51.33	35.01	25.09	21.23	16.31	13.90
26.....		51.52	35.23	25.32	21.45	16.49	14.07
27.....		51.74	35.49	25.56	21.67	16.69	14.23
28.....		51.99	35.76	25.82	21.91	16.90	14.41
29.....		52.23	36.05	26.10	22.18	17.11	14.61
30.....		52.45	36.33	26.37	22.42	17.31	14.78

<sup>1</sup> Guardian Life Insurance Co., premium rate table for disability income insurance for men and women in the lowest risk classification—executive.

## EXHIBIT X

## TITLE VII CIVIL RIGHTS ACT OF 1965

TITLE 29, LABOR, CHAPTER IV, PART 1604—GUIDELINES ON DISCRIMINATION  
BECAUSE OF SEX

## Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a *prima facie* violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

## Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in *prima facie* violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Representative GRIFFITHS. Mr. Rohde, may I ask you to try and confine your remarks to about 15 minutes and we will give you 2 minutes warning.

Mr. ROHDE. OK.

STATEMENT OF STEVEN ROHDE, MEMBER OF THE STAFF, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY, TESTIFYING FOR WILLIAM L. TAYLOR, DIRECTOR

Mr. ROHDE. Thank you. My name is Steven Rohde and I am a member of the staff of the Center for National Policy Review which is a privately funded organization based at Catholic University Law School.

I wish to express regrets on behalf of Mr. Taylor who could not be here this morning because of an illness in his family.<sup>1</sup>

Our testimony is on the subject of discriminatory treatment of women in home mortgage financing. Sexist practices are prevalent throughout the Nation's mortgage finance industry. Women face obstacles in obtaining mortgage credit whether they apply individually for a loan or whether they apply jointly with their husbands. And neither type of discrimination can be justified on economic grounds.

While some progress has been made in identifying the barriers to women in mortgage financing, and in fact there has been some reform, we really have not gone very far beyond the starting line as yet.

One of the most prevalent discriminatory practices in mortgage lending is the denial of a loan to a husband and wife because the lender routinely discounts or totally ignores the wife's income in computing family income. Such practices prevent many families from achieving home ownership or compel them to accept housing that does not suit their needs and incomes.

Now, the widespread nature of the practice of discounting income of working wives has been demonstrated not only by a mounting number of complaints but also by a number of recent studies, and you read the statistics in your opening statement on the one from the Federal Home Loan Bank Board. I won't say anything more about that one except to state because of the way the sample was chosen, it is very likely that that study understates the extent of discrimination.

Representative GRIFFITHS. I feel sure that is the case.

Mr. ROHDE. And the basic results of that study have been confirmed in other studies, particularly one by the U.S. Savings & Loan League.

There is also evidence that the discrimination is particularly severe against women who are not classified as professional workers although even women who are classified as professional workers also very frequently have their income discounted.

Those various surveys that have been done basically deal with practices in the conventional mortgage market. There is also a great deal of discrimination that is prevalent in the Veterans' Administration, VA guaranteed loan mortgages market, and the VA written credit standards are still extremely restrictive in tone. And actually in practice as evidenced by the various complaints that have come in, the policy and practices seem to be even more restrictive than the written standard.

Top officials at the Veterans' Administration apparently now realize some of the problems, and they have informed us that they are now redrafting the written standards, although no details are available yet. So we feel there is some reason for hope there.

<sup>1</sup> See Mr. Taylor's prepared statement, beginning on p. 195.

But even assuming that the discrimination is eliminated in the written VA standard, there is still going to be a major problem in translating that into actual practice, and particularly to retrain the VA loan underwriters.

Just a few days ago, for example, an employee from the Women's Law Fund in Cleveland told me that a VA loan official had explained to her, in explaining VA's policy, that "It is un-American to count a woman's income," and that the only way a woman's income could be counted would be if she were to "have a hysterectomy."

This is the type of sexist attitude I am very fearful is still prevalent among VA underwriters, and mortgage lenders in general, so just changing the written standard is only one part of the job.

In contrast to the current policy of VA and many conventional lenders, FHA does recognize the basic principle that the fact that a woman may be of child bearing age is not a relevant factor in underwriting a mortgage loan. FHA's underwriting handbook, for example, states, "With strong motives for returning to work, any failure to do so after maternity leave would probably be due to causes which would be unpredictable and would represent such a very small percentage of volume that it could be accepted as a calculated risk."

So FHA's policy is if the wife's employment is confirmed and there are "good possibilities for continued employment," then all of her income is counted, and although the data isn't perfect to determine how it is working out in practice, what data is available does tend to indicate in practice that in FHA loans the wife's income is almost always counted at 100 percent.

Now, this arbitrary discounting or ignoring of the wife's income is based on the assumption that the employment of married women is merely a temporary aberration and that once a woman becomes pregnant her employment will end permanently. These assumptions cannot be economically justified. They ignore changing social conditions, the rapidly increasing employment of women, and the increased availability of liberal maternity leave policies. But worst of all, I think, is that these practices rest on an insulting assumption that people are devoid of common sense and that they cannot rationally plan their lives, particularly that women will deliberately quit work and then refuse to return to work even if doing that would result in a foreclosure and loss of their house. It is really an incredible assumption.

So really you have to rely on commonsense—there is no economic evidence at all to support those who routinely discount all or part of the wife's income in underwriting mortgage loans. In fact, the major studies on mortgage risk provide strong evidence that in determining default risk the key factors are the characteristics of the loan itself, in other words, the terms of the financing, particularly the loan to value ratio, rather than the characteristics of the borrower.

Also there was one study that specifically looked at the question of mortgage delinquency rates in two-wage earner families as opposed to one-wage earner families—a study in 1964 by Leon Kendall—and the data indicated there that if anything, loans to families where the husband's income accounted for 100 percent of family income actually had a slightly higher likelihood of being delinquent than loans to families where the husband's income is only a portion of family income.

Perhaps the fact there were two wage earners in the family gave the family a little bit more flexibility in meeting their commitments.

From testimony at various hearings and from speeches it is now apparent that the leaders of the banking and savings and loan industries are beginning to recognize the fact that this widespread discriminatory treatment of women is not based on sound economic principles. The problem really is the message has not gotten through to the local level, to the individual lending institutions and the individual loan officers. It is unrealistic to expect that practices that are encrusted with age and surrounded by myth will yield readily and quickly. Thus, firm Government, national policies are going to be needed.

One other area where women encounter problems is where they apply individually for a mortgage loan and they may run into discrimination not only because of their sex but also their marital status; as people who are single, divorced, widowed, or separated. The survey by the Federal Home Loan Bank Board you referred to earlier had a question on marital status and that one revealed that 64 percent of the savings and loans said that a person's marital status was used as a factor in evaluating loan applications and 18 percent actually indicated that a person's marital status, in and of itself, could be grounds for automatic disqualification.

Also as a practical matter discrimination because of marital status has a very sharp discriminatory effect on women currently. The very large percentage of people who are divorced, widowed, single, who are seeking mortgage loans are women. Even the FHA which, as I have said, has a nondiscriminatory policy with relation to counting working wives' income, has in its guidelines discriminatory language with regard to marital status. And that needs to be corrected.

What about the economic evidence? The most comprehensive study of mortgage delinquency I think that has been done—relating it to characteristics of borrowers and characteristics of loans—is a study done in 1970 by John Herzog and James Earley entitled "Home Mortgage Delinquency and Foreclosure," and this study found there was no demonstrable relationship between marital status and mortgage loan risk. So, again, these discriminatory practices are based on myth.

There is one area where some progress has been made, particularly in regard to the issue of counting a wife's income, and that is in respect to the secondary market programs for conventional mortgages which were established last year by two Federal agencies, the Federal Home Loan Mortgage Corporation, commonly called Freddy Mac, and the Federal National Mortgage Association, commonly called Fannie Mae. These programs, if they are implemented successfully, can make a contribution in reforming underwriting practices. This is discussed in some detail in the statement. But to summarize I will explain that while they do have potential to encourage nondiscriminatory practices, it is quite clear that by themselves they cannot possibly satisfactorily address the problems of sexism in the mortgage finance industry.

So the question then comes as to what are the remedial actions that are necessary? First, I think it is very highly desirable to have a Federal law which will specifically prohibit discrimination by lending institutions on the basis of sex or marital status, and providing a cause of civil action against lenders by citizens who have been discriminated against. But even if such legislation were passed, the heart of an effec-

tive program to eliminate mortgage lending discrimination because of sex and marital status must rest with the enforcement of strong regulations by the agencies which supervise and examine the Nation's mortgage lenders.

Experience with the Fair Housing Act of 1968, which prohibits racial discrimination in mortgage lending, graphically illustrates the importance of the regulatory process. Although title VIII was passed more than 5 years ago, yet very little progress has been made because the responsible agencies, the Federal Home Loan Bank Board, FDIC, Comptroller of the Currency and the Board of Governors of the Federal Reserve System, have neglected their responsibility to enforce the law. So it cannot be assumed that just the mere passage of a Federal law prohibiting discrimination because of sex or marital status, will automatically result in an end to discrimination. Enforcement is the key.

Actually, these agencies that I mentioned have ample authority under their own enabling statute to take action right now without even waiting for a law. By promulgating strong regulations and guidelines against discriminatory treatment of women, by requiring the keeping of an appropriate record and by sending in teams of examiners, which they have as a part of their existing structure to check on compliance, and then by demonstrating a willingness to impose sanctions such as cease and desist orders and other sanctions, these financial regulatory agencies could take in my opinion, decisive action to root out sex discrimination in the banking and savings and loans industries. But so far no such action has been forthcoming.

The Bank Board has acknowledged that its enabling statutes provide authority to regulate in this area but so far has not acted.

A second agency, FDIC, has held hearings on this very subject, whether they have the authority to do it and whether it is desirable to promulgate regulations, but in the 7 months since the holding of these hearings no action has been forthcoming. The other two agencies, the Comptroller of the Currency and the Federal Reserve, have so far been totally unresponsive to pleas that they take action. The principal bases of authority for the FDIC, the Comptroller of the Currency and the Federal Reserve to take action have been discussed in detail in testimony at the hearings held by FDIC. I will just briefly mention them.

First, these agencies have general responsibility under the Housing Act of 1949 which was the act which set the national housing goal of a decent home and suitable living environment for every American family.

Second, there are provisions in law directing these agencies to consider whether given banks are meeting "the convenience and need of the community." I can't possibly see how a bank which thwarts national housing goals by discriminating against women can rank high in its satisfying of the needs of the community."

Third, the agencies are charged by law with preventing banks from engaging in unsound business practices and I don't think it can possibly be considered sound business for a bank to arbitrarily limit its market and deny itself potentially profitable loans based just on myths.

Representative GRIFFITHS. May I interrupt you? The House has begun its session and while I don't mind missing the first quorum call,

I will probably have to go shortly after that to answer other rollcalls. You may rest assured that we will put the prepared statement of Mr. Taylor in the record.

Mr. ROHDE. Right.

[The prepared statement of Mr. Taylor follows:]

PREPARED STATEMENT OF WILLIAM L. TAYLOR, DIRECTOR, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY

DISCRIMINATORY TREATMENT OF WOMEN IN HOME MORTGAGE FINANCING

Mrs. Griffiths and members of the committee, my name is William L. Taylor and I am Director of the Center for National Policy Review, a privately funded organization concerned with civil rights and urban problems based at Catholic University Law School. I am very glad to have the opportunity provided by your invitation to testify on the subject of discriminatory treatment of women in home mortgage financing.

The Center's program in this area has involved (1) efforts to persuade Federal agencies to adopt and implement policies to prevent discrimination in their own mortgage loan programs and (2) efforts to persuade Federal agencies which regulate banks and savings and loan associations to adopt rules prohibiting discriminatory treatment of women by the institutions they regulate.

Practices of sex discrimination are prevalent throughout the nation's mortgage finance industry. Women face obstacles in obtaining mortgage credit whether they apply individually for a loan or jointly with their husbands. Neither type of discrimination can be justified on economic grounds.

We have found that many of the practices that disadvantage women are products of a by-gone era and of assumptions about the status of women as workers that are no longer valid, if they ever were. While such practices are not necessarily invidiously intended, the effect is the same as if they were.

Some progress has been made in identifying the barriers to women in mortgage financing, in exposing the lack of economic justification for many prevalent practices, and in beginning the process of reform. But we have not gone very far beyond the starting line and a concerted effort, involving the leadership and resources of elected officials as well as private organizations, is needed if true equality of opportunity is to be established.

DISCOUNTING OF A WORKING WIFE'S INCOME

One of the most prevalent discriminatory practices in mortgage lending is the denial of a loan to a husband and wife because the lender routinely discounts or totally ignores the wife's income in computing family income. Such practices prevent many families from achieving homeownership or compel them to accept housing that does not suit their needs and incomes.

Such practices have a racial impact as well, because in minority families the income of the wife often represents a significant contribution to the family's income and standard of living. Recent data from the Bureau of Labor Statistics show that the labor force participation rate for nonwhite wives is 52.5%, as contrasted with a 39.7% rate for white wives. In the key age group 25-34, nonwhite wives have a 59.4% labor force participation rate, as contrasted with 38.0% for white wives. Thus, eliminating the practice of discounting or ignoring a wife's income must be an important element in any effort to open up new homeownership opportunities for minorities.

The widespread nature of the practice of discounting the income of working wives has been demonstrated not only by a mounting number of complaints from women, but by several recent studies.

In March, 1972, the Federal Home Loan Bank Board, the Federal agency which regulates the savings and loan industry, released the results of a survey conducted the previous year. With respect to conventional mortgage loans, one of the questions asked savings and loan managers was what credit they would allow for a working wife's income if she were 25 years old, had two school age children, and worked full time as a secretary. Fully 25 percent of the savings and loan managers responded by saying that they would count none of her

income, and most reported percentages of 50% or less. Only 22 percent indicated that they would give full credit to her income.<sup>1</sup>

Confirmation of the results of the Bank Board survey came from another survey released in May, 1972, by the United States Savings and Loan League. This survey involved more than 400 large savings and loans. One of the questions was: "Assuming you give weight to a working wife's income, how much will you give?" In response, only 28 percent indicated that they would give full credit to a wife's income and only 14 percent more indicated they would count it more than 50 percent. One of the interesting aspects of the results was the non-response rate of this question, which was 21 percent. This is significant because for all of the other questions in the survey, the non-response rate was approximately one percent or less. It appears that for approximately 20 percent of the savings and loans in the survey, the first part of the question: "Assuming you give weight to a working wife's income" may have been a false assumption.

Women who are not classified as professional workers may be more likely than other women to be the victims of discounting practices. Evidence that this is the case comes from a variety of sources, including a report just released by the D.C. Advisory Commission on the Status of Women and the Women's Legal Defense Fund, surveying mortgage lending practices in the metropolitan Washington area. Whereas  $\frac{2}{3}$  of the responding lenders said they would count 100% of a wife's income if she were a professional, only  $\frac{1}{3}$  would fully count the income of a nonprofessional wife.<sup>2</sup> This distinction is not rational since very often it is in working class families where the wife is most likely to continue working out of economic necessity.

#### VA CREDIT STANDARDS

The practice of discounting all or part of a wife's income has not been confined to the conventional mortgage market, but is also widespread in connection with loans guaranteed by the Veterans Administration. VA's written standard itself is quite restrictive in tone and indicated that only in special circumstances can a wife's income be counted fully as normal family income. Reports of a number of complaints from several cities provide evidence that in practice, VA's policy is often applied in a manner even more restrictive than the written criteria.

In connection with VA loan applications, there have been numerous reports that mortgage lenders have required families to submit affidavits swearing that they use and will continue to use methods of birth control. Sometimes mortgage lenders have solicited medical certificates regarding a woman's ability to have children. These unconscionable invasions of privacy apparently have been prompted by a belief that such submissions were necessary to convince the VA to approve the loan. In February of this year, the VA issued an information bulletin stating that VA does not require or condone the practice of soliciting statements on the capacity of a woman to have children or on the family's birth control plans. Unfortunately, however, VA did not at the same time revise its basically restrictive policy for dealing with wife's income, a policy which suggests that the mere possibility of pregnancy is a basis for discounting income.

Top officials at the Veterans Administration, I am happy to report, now recognize that revision of their credit standards is needed and new criteria governing treatment of a wife's income are being drafted.

But new standards are only one part of the job. Just a few days ago, an employee of the Womens Law Fund in Cleveland reported to us that a VA loan official explained to her that it is "un-American to count a woman's income" and that the only way a woman's income could be counted would be if she were to "have a hysterectomy."

Once VA revises its standards, a major effort will be needed to make clear both to VA loan officials and to lenders that they must abide by the new criteria. VA should also institute a data collection system which will allow it to determine whether the new criteria are being observed.

<sup>1</sup> It is likely that the survey understates the extent of discrimination, since the 100 savings and loan associations sent the questionnaire were chosen in part because they were likely to cooperate. Seventy-four associations responded. In addition, data in the survey reflecting lender willingness to make FHA insured loans, subsidized loans and 90% conventional loans suggest that the associations in the sample are generally more liberal and more responsive to social needs than the average savings and loan.

<sup>2</sup> Since the response rate for this survey was below 50%, the data must be interpreted with caution, but in any case probably understates the extent of discrimination.

## FHA CREDIT STANDARDS

In contrast to the current policy of VA, and that of many conventional mortgage lenders, the Federal Housing Administration (FHA) recognizes the principle that the fact that a woman may be of childbearing age should not be a factor in underwriting a mortgage loan. FHA's basic policy is to count all of a wife's income if such income and a motivating interest "may normally be expected to continue through the early period of mortgage risk." The early period of mortgage risk is defined as the first five years of the mortgage term. With regard to maternity leave, FHA's underwriting handbook states:

"The principle element of mortgage risk in allowing income of working wives as effective income is the possibility of its interruption by maternity leave. Most employers recognize this possibility and provide for maternity leave, with job retention, as an inducement of employment. With strong motives for returning to work, any failure to do so after maternity leave would probably be due to causes which would be unpredictable and would represent such a very small percentage of volume that it could be accepted as a calculated risk." (Mortgage Credit Analysis Handbook, Chapter 1, Section 4, Paragraph 1-22b).

Thus, if a wife's employment is confirmed and there are "good possibilities for continued employment", all of her income is to be counted.

For the most part, the evidence suggests that FHA underwriters are actually applying this nondiscriminatory policy in practice. For example, in 1970, for new single family homes in FHA's section 203(b) program, all of the wife's income was counted in 91 percent of the cases where the wife worked. While this record is encouraging, it is incomplete in that it does not include data on loans rejected by FHA. To make sure that FHA's nondiscriminatory policy is fully implemented by FHA underwriters, data on rejected loans, including an analysis of the reasons for loan rejections, is needed.

## INVALIDITY OF DISCOUNTING A WIFE'S INCOME

Differential treatment of a working wife's income is based on the assumption that the employment of married women is merely a temporary aberration, and that once a woman becomes pregnant, her employment will end permanently.

Whether or not these assumptions are seriously believed, they cannot be justified from an economic viewpoint. Such assumptions ignore changing social conditions, the rapidly increasing employment of women and the increased availability of liberal maternity leave policies. Worst of all, these practices rest on an insulting assumption that people are devoid of common sense and cannot rationally plan their lives—that women will deliberately quit work or refuse to return even if this would mean loss of their house due to foreclosure.

In underwriting a mortgage loan, it is not necessary to conclude that a working wife will remain in the labor force for the life of the loan. The question is whether her income is likely to be stable during the early years of the mortgage. This is the critical period, since experience indicates that if foreclosure occurs, it is likely to occur during the first few years. Even if foreclosure should happen after the early years of the mortgage, the risk to the lending institution will be substantially reduced, since the ratio of the remaining balance of the loan to the value of the house will have been reduced.

There is no economic evidence at all to support those who routinely discount all or part of a wife's income in underwriting mortgage loans. In fact the major studies on mortgage risk provide strong evidence that, in determining default risk, the key factors are the characteristics of the loan itself, particularly the loan to value ratio, rather than the characteristics of the borrower. The major studies are by George Furstenberg, *Technical Studies of Mortgage Default Risk: An Analysis of the Experience with FHA and VA Home Loans During the Decade 1957-66*. Center for Urban Development Research, Cornell University, Ithaca, New York, 1971 and by Joan Herzog and James Earley, *Home Mortgage Delinquency and Foreclosure*, National Bureau of Economic Research, New York, 1970.

The specific question of mortgage delinquency rates in two-wage earner families as opposed to single wage earner families was examined in a 1964 study by Leon Kendall for the United States Savings and Loan League, entitled *Anatomy of the Residential Mortgage*. While the results should be interpreted with caution because of failure to control for other variables, the data suggest that, if anything, loans to families where the husband's income accounted for 100% of

family income actually had a slightly higher likelihood of being delinquent than loans to families where the husband's income was only a portion of family income.

The leaders of the banking and savings and loan industries are beginning to recognize the fact that the widespread discriminatory treatment of women by mortgage lenders is not based on sound economic principles. In response to a question at last year's hearings before the National Commission on Consumer Finance, John Farry, then President of the United States Savings and Loan League, acknowledged that he could not understand why many savings and loans routinely discounted the income of working wives, and he indicated that at his own association it was normal practice to count a wife's income fully.

In testimony last December at hearings held by FDIC, Rex Morthland, President-Elect of the American Bankers Association, stated his belief that women are better credit risks than men. Todd Cooke, who was representing the mutual savings bank industry, said that he would not oppose a regulation prohibiting lending discrimination based on sex.

And, just a couple of weeks ago, Eugene Adams, the current President of the American Bankers Association, cited the widespread sex discrimination that has been shown to exist, particularly with regard to the practice of discounting a wife's income, and called upon bankers to reexamine their practices.

This is encouraging evidence that leaders of the industry are becoming aware that current practices are irrational and unfair. But this is only a beginning. The problem is that the message has not yet gotten through to the local level—to the individual lending institution and the individual loan officer. It is unrealistic to expect that practices that are encrusted with age and surrounded by myth will yield readily and quickly. Firm government policies and strong follow-up are needed.

#### DISCRIMINATION BECAUSE OF MARITAL STATUS

When women apply individually for a mortgage loan, they frequently run into discrimination because of their marital status—as people who are single, divorced, widowed or separated. The survey of the Federal Home Loan Bank Board previously noted revealed that 64% of the savings and loans admit using a person's marital status as a factor in evaluating the loan applications. Eighteen percent actually indicated that a person's marital status, in and of itself, could be grounds for automatic disqualification. The joint survey of the D.C. Advisory Commission and the Women's Legal Defense Fund suggests that people who are legally separated may encounter the most serious problems.

There is no clear evidence whether men who are divorced, widowed or separated encounter the same problems as women in obtaining mortgage loans. But as a practical matter the impact of policies that disadvantage people because of marital status are felt disproportionately by women since a very large percentage of persons in these categories who seek mortgage loans are women. In addition discrimination against women who are single and have no dependents is also a problem. Many single people now find the purchase of condominiums or small homes to be an attractive investment, but sometimes find difficulty in obtaining mortgage loans.

Even the FHA, which as we have seen has a basically nondiscriminatory policy with respect to counting a wife's income, includes discriminatory language in its credit standards with respect to marital status. Section 2-7(a) of the FHA Mortgage Credit Analysis Handbook states:

"The mortgagor who is married and has a family generally evidences more stability than a mortgagor who is single because, among other things, he has responsibilities holding him to his obligations."

This language should be stricken from the FHA standards. The key to judging a person's credit worthiness ought not be an extraneous factor such as marital status, but rather whether he or she has a favorable credit record and a stable income which is adequate to meet the monthly mortgage payments.

There is no legitimate rationale for discrimination based on marital status. If a woman is single, widowed, divorced, or separated and has a job, and if she does not change her marital status during the early years of the mortgage, the chance that she would quit work during that time span is remote. If, on the other hand, during the early years of the mortgage she gets married or is reconciled with her husband, the likelihood is that the income of her household would actually increase. In either event possibility of a financial deterioration is quite remote. It is not surprising then that the 1970 study by Herzog and Earley for

the National Bureau of Economic Research, entitled Home Mortgage Delinquency and Foreclosure, found no demonstrable relationship between marital status and mortgage loan risk.

#### FHLMC AND FNMA SECONDARY MARKET PROGRAMS FOR CONVENTIONAL MORTGAGES

One area where progress has been made is in the secondary market programs for conventional mortgages established by the Federal Home Loan Mortgage Corporation (FHLMC, commonly called Freddy Mac) and the Federal National Mortgage Association (FNMA, commonly called Fannie Mae). These programs, if implemented properly, can be an important factor in reforming underwriting practices.

Under authority provided in the Emergency Home Finance Act of 1970, FHLMC and FNMA last year began buying and selling conventional mortgages to facilitate the flow of credit for residential mortgage financing. Basically the two agencies perform parallel functions, the principal difference being that FHLMC's operations have been confined to savings and loan associations, while FNMA does business primarily with mortgage bankers and commercial banks.

A major obstacle to the establishment of a successful secondary market for conventional mortgages has traditionally been the wide diversity in mortgage instruments, procedures and underwriting criteria that has existed in the conventional market. Recognizing his problem, both FHLMC and FNMA undertook to establish credit and property underwriting criteria for use by mortgage lenders wishing to sell their mortgages to these agencies.

FHLMC, after consultation with public interest groups, issued a set of guidelines which are, on the whole, sound and nondiscriminatory. The guideline dealing with the case of two wage earners in a family indicates generally that there should be no discounting of income as long as it is determined that "both will probably work for several years (normally at least 20% of the mortgage term)." It is also made clear that in making this determination, the possibility of temporary leave, such as maternity leave, is *not* a basis for discounting any portion of the borrower's income.

In contrast, FNMA initially published credit guidelines which contained a number of restrictive features, including a provision that a wife's income should generally be counted at only 50%. After a coalition of public interest groups publicly challenged the guidelines, FNMA drafted a sharply revised set of criteria. With respect to counting a wife's income, FNMA eliminated the 50% rule and substituted the following language relating to the combined income of husband and wife: "The key determination to be made is whether the circumstances reasonably indicate that the income, jointly or severally, will continue in a manner sufficient to liquidate the debt under the terms of the note and mortgage."

While this language is an improvement, its vagueness leaves open the possibility of discriminatory interpretation. Fortunately, at a series of 24 meetings monitored by public interest groups, FNMA officials, for the most part, gave positive interpretations to its guidelines, interpretations which generally indicated that a wife's income under normal circumstances should be fully counted.

The extent to which the written guidelines of FHLMC and the positive public statements by FNMA officials will result in reformed underwriting practices depends partly on whether FHLMC and FNMA underwriters properly implement the new policy. Affirmative action by FHLMC and FNMA should encourage savings and loan associations, commercial banks and mortgage bankers to change their own underwriting practices, because they will know that they can count a wife's income and will still be able to sell these mortgages on FHLMC or FNMA. Also, it is hoped that if lenders reform their practices in connection with the loans sold to FHLMC and FNMA, they may also reform their practices with respect to other loans to avoid maintaining two sets of underwriting criteria.

The real test, of course, of the FHLMC and FNMA programs is in the loans that are actually made by mortgage lenders. Thus, it is essential that FHLMC and FNMA collect and analyze detailed data on loans accepted and rejected for purchase, in order to give a clear picture of the characteristics of borrowers to whom loans are being made, and to determine whether the income of working wives is being fairly treated.

FHLMC has made a good start in aggregating such data, and information should soon be available which will indicate how FHLMC's guidelines are being

translated into mortgage loans made. Unfortunately, however, FNMA has not yet committed itself to a similar program of data analysis.

While we welcome the steps taken by FHLMC & FNMA, they are not a panacea for dealing with sex discrimination in mortgage financing. Of the many thousands of savings and loan associations in the United States, only several hundred thus far have actively participated in the FHLMC program. While a larger percentage of mortgage bankers do business with FNMA, a great many commercial banks are not involved in the program.

Even for those lending institutions that do actively do business with FHLMC or FNMA, there is no guarantee that these institutions will not discriminate. While lenders have been given an incentive to reform their practices in that they know they can make a loan based on counting a wife's income and FNMA and FHLMC will purchase that loan, neither FNMA nor FHLMC has stated clearly that they will refuse to purchase mortgages from lenders who arbitrarily discount a wife's income. FNMA does have a warranty against sex discrimination in the setting of terms or conditions with respect to mortgages sold to it, and this conceivably could be used as a basis for such a refusal. However, I am not aware of any effort by FNMA to monitor the practices of its sellers in order to enforce this warranty.

Thus, while it is clear that some progress has been made, it is also quite clear that other approaches are needed to deal with entrenched practices of sex discrimination.

#### REMEDIAL ACTION

There are several key elements of a program to eliminate sex discrimination by the nation's home finance industry. As I indicated earlier one obvious first step is for the Federal agencies which have their own mortgage credit programs (VA, FHA, FHLMC, FNMA) to promulgate and enforce underwriting standards that assure equal opportunity in these programs. This includes the redrafting of VA's criteria, revisions in FNMA's criteria to make them less vague, and a change in FHA's criteria with respect to marital status. It also means that all agencies must monitor closely the actions of their own underwriters, must take steps to assure that mortgage lenders are aware of the equal opportunity policies, and must collect data to demonstrate how the policies are being translated into mortgage loans actually made. And it means that each of these agencies should make it clear that it will not do business with lenders who discriminate on the basis of sex or marital status.

In addition, it would be helpful to have a Federal law prohibiting discrimination by lending institutions on the basis of sex or marital status, and providing a cause of civil action against lenders by citizens who have been discriminated against. In the final analysis, however, the heart of an effective program to eliminate mortgage lending discrimination because of sex or marital status must rest with the enforcement of strong regulations by the agencies which supervise and examine the nation's mortgage lenders.

Experience with the Fair Housing Act of 1968, which prohibits racial discrimination in mortgage lending, graphically illustrates the importance of the regulatory process. Although Title VIII was enacted more than five years ago, little progress has been made in promoting equal opportunity in lending for racial minorities, because the responsible Federal agencies, the Federal Home Loan Bank Board, the FDIC, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, have shamefully neglected their responsibility to enforce the law. So it cannot be assumed that a Federal law making discrimination because of sex or marital status illegal will automatically result in an end to discrimination.

Actually, the agencies that regulate lending institutions need not wait for legislation, since they have ample authority now to take action against sex discrimination. The banking and savings and loan industries are among the most heavily regulated and assisted industries in the United States. There already exists a network of Federal examiners created to monitor closely the activities of banks and savings and loan associations on a regular basis to make sure that they comply with laws and regulations and that their lending policies and other activities are in accordance with sound practice. Thus there is an existing structure which can be utilized to eliminate discriminatory practices.

By promulgating strong regulations and guidelines against discriminatory treatment of women, by requiring the keeping of appropriate records, by sending in teams of examiners to check on compliance, and by demonstrating a will-

ingness to impose sanctions such as cease and desist orders, the financial regulatory agencies could take decisive action to root out sex discrimination in the banking and savings and loan industries. So far such action has not been forthcoming.

One agency, the Federal Home Loan Bank Board, has acknowledged that its enabling statutes provide authority to regulate in this area, but it has not acted:

A second agency, the FDIC, which regulates state chartered banks which are not members of the Federal Reserve System, held hearings in Dec. on lending discrimination and specifically considered the need for regulations prohibiting lending discrimination based on sex and its authority to promulgate such regulations. But FDIC has taken no action in the intervening seven months since its hearings were held. The other two agencies, the Comptroller of the Currency, which regulates national banks, and the Board of Governors of the Federal Reserve System, which regulates state chartered Federal Reserve members, have been unresponsive to pleas that they take action against sex discrimination.

The principal bases of authority for appropriate regulations by the FDIC were discussed in detail in the hearings last December, and I will summarize them briefly now. The same basic principles also apply to the Comptroller of the Currency and the Federal Reserve.

First, these agencies have a responsibility under the Housing Act of 1949 which set a national goal "of a decent home and a suitable environment for every American family", and which directs that "departments or agencies of the Federal government having powers, functions or duties with respect to housing, shall exercise their powers, functions or duties under this or any other law, consistently with the national housing policy declared by this Act and in such a manner as will facilitate sustained progress in attaining the national housing objective hereby established. . . ."

Second, several provisions of law direct these agencies to consider whether given banks are meeting "the convenience and needs of the community." A bank which thwarts national housing goals by discriminating against women clearly can not rank high on its servicing of the "needs of the community."

Third, the agencies are charged by law with preventing regulated banks from engaging in unsound business practices. It can not be considered sound business for a bank to limit arbitrarily its market and deny itself potentially profitable loans. Yet this is precisely what a bank does when it engages in sex discrimination. In March, 1972, a bi-partisan coalition of 180 leading economists, including the last five chairmen of the President's Council of Economic Advisers, called on the banking agencies to prohibit sex discrimination, noting that discrimination for non-economic reasons "results in an economic cost not only to these discriminated against but also to those who do the discriminating." Also sex discrimination is unsound because it may damage the bank's reputation.

Fourth, because practices of sex discrimination in mortgage lending have a discriminatory impact on minority families, a regulation against sex discrimination is necessary for effective enforcement of the Fair Housing Act of 1968.

Finally, the agencies also have a responsibility stemming directly from the Constitution. While the Equal Rights Amendment still awaits ratification, there is no doubt that arbitrary or unreasonable classification based on sex also run afoul of the equal protection clause of the 14th Amendment and the equal protection guarantees of the 5th Amendment. See e.g. *Reed v. Reed*, 404 U.S. 71 (1971).

The banking agencies should follow the precedent of the Law Enforcement Assistance Administration which used the 14th Amendment as a basic authority for promulgating a regulation prohibiting discrimination on the basis of race or sex in employment by its grantees. This was at a time when discrimination in state and local government employment was not specifically prohibited by Federal statute.

#### CONCLUSION

Madam Chairman, if women are to achieve true equality of opportunity, equal access to credit is essential. And access to mortgage credit is particularly vital, since for most American families, the largest and most important credit transaction they ever make is in connection with the purchase of a home.

In holding these hearings, I believe your committee is performing a distinct public service. As in many areas of American life, discrimination has survived only because it has not been exposed to the light of day and because executive agencies of the government have not been true to the dictates of law and justice.

Your committee is ventilating issues that have long been buried in darkness. I hope that following the hearings, Congress, exercising both its legislative and oversight responsibilities, will require that Federal agencies charged with protecting the public act at long last to end discrimination in lending.

Representative GRIFFITHS. Miss Gates, may I ask you to read your suggested recommendations and then I would like to ask some questions.

**STATEMENT OF MARGARET J. GATES AND JANE R. CHAPMAN,  
CODIRECTORS, CENTER FOR WOMEN POLICY STUDIES**

MISS GATES. Our preliminary conclusion is that the economic and legal barriers to equal access to credit for women are few and of limited application. The problem appears to be one of de facto rather than de jure discrimination and the solution may be more complicated than the National Commission on Consumer Finance predicted. We believe that action is required in at least three areas—the Congress, the public, and the industry.

1. The Congress should hold hearings to determine whether Federal legislation is needed and, if so, how it should be enforced. There are a few theories listed below upon which a legal remedy could be fashioned without specific Federal legislation but since none of them has been utilized we can only speculate as to their efficacy.

(a) Litigation has been contemplated based on the 14th amendment equal protection clause, but such a suit raises the threshold problem of proving “state action,” which may be found to be present in Government regulation of lending institutions but may be difficult to establish in the case of other businesses. If that requirement were met, the outcome of the suit would then depend on whether the courts would apply the “suspect classification” test, an active standard of review similar to that which can be expected to be employed under the equal rights amendment. It is unclear whether a majority of the Supreme Court will invoke the suspect classification test while the ERA is pending before the States. Other tests employed by the courts in equal protection cases would not insure the success of such a suit.

(b) Litigation under State statutes should be simpler than the constitutional approach but to our knowledge no such challenge has reached the courts. The reason for this may be that most of the legislation prohibiting sex discrimination by creditors is very recent.

(c) The Federal Trade Commission could provide a Federal administrative remedy. It is certainly arguable that it is an unfair trade practice within the meaning of section 5 of the Federal Trade Commission Act to deny women equal access to credit. It now appears that the Commission has rulemaking power to prohibit credit discrimination in commerce, although its authority under the act does not extend to the regulation of banks.

(d) The Federal agencies which regulate lending institutions have been petitioned over the past year and a half to employ their rulemaking power to outlaw sex discrimination. The response has been to question whether there is authority in the regulatory bodies to address the problems of sex discrimination since there has been no congressional mandate of the kind which exists, for example, as Steve

has said, in the case of race discrimination in housing. Those are the possible legal remedies, very briefly.

2. In addition to those, important education and action are needed in the public sector. More women must be convinced of the importance of establishing a credit record and maintaining it throughout life as a necessary step toward becoming an independent economic entity. When they realize this necessity, they should be urged to bring pressure to bear upon lenders and businesses at the local level. Written complaints to the offending businesses are important because they let the creditor know the specific practices which are offensive and why.

3. Segments of the credit industry are already disposed to review and rethink their credit criteria, revise their practices as well as their policies and to use the data within their control, to develop credit criteria which are valid and nondiscriminatory as applied to women.

In accomplishing this, more research should be undertaken utilizing the data peculiarly within the grasp of the industry—the data on performances of past accounts. Two caveats are important here. First, sex bias must be eliminated from the methodology in this sort of research as well as in the credit scoring systems. Second, the research should cover a large enough sample to provide significant findings.

The credit industry can be expected to deny the need for legislation. They are correct in pointing out that it is in the interest of lenders and merchants to do business with the most reliable borrowers or purchasers without regard to sex. Dr. Barbara Bergmann, a noted scholar on the economics of discrimination, who testified here earlier, has pointed out that: “\* \* \* discrimination does not by and large serve the economic ends of those who do the discriminating. The financial gains to those who do the discriminating are low or negative.”

Laws serve their purpose in the resolution of conflicting interests. In this case the economic interests of women and creditors are complementary, not conflicting. The parties perceive themselves as adversaries because they differ as to what is and is not a reasonable way to decide whether a woman is creditworthy. During the remainder of our grant period we will work, hopefully with the help of the credit industry, to develop the information which is needed to make this determination.

Representative GRIFFITHS. Thank you very much.

[The prepared statement of Miss Chapman and Miss Gates follows:]

PREPARED STATEMENT OF JANE R. CHAPMAN AND MARGARET J. GATES

My name is Jane Chapman and I am Co-Director of the Center for Women Policy Studies, a nonprofit corporation located in the District of Columbia and dedicated to the investigation of issues affecting women. I am an economist and Margaret Gates, the other Co-Director, is an attorney. We are testifying today regarding the problems which women have obtaining consumer credit and loans, the economic and legal roots of these problems, and possible remedies. The inability to secure credit has the widest repercussions, affecting such matters such as quality and location of housing, educational opportunities, and the pursuit of a business or profession.

Public consciousness of the problem has been growing since May 1972 when the National Commission on Consumer Finance held hearings which publicized many incidents of discriminatory treatment of female credit applicants. Since that time, a number of organizations have investigated complaints from women

claiming that they have been unable to receive credit solely because of their sex.<sup>1</sup>

Our own organization has received a Ford Foundation grant for the purpose of investigating barriers to the availability of credit to women and the legal and economic bases underlying these barriers. Our study covers mortgages, installment loans, educational loans, credit cards, retail credit, and business loans.

Some of the types of credit problems faced by women are as follows:

1. Single women have more trouble obtaining credit than single men (particularly in regard to mortgage credit).

2. Creditors generally require a woman upon marriage to reapply for credit, usually in the husband's name. Similar reapplication is not asked of men when they marry.

3. Creditors are often unwilling to extend credit to married women in their own names.

4. Creditors are often unwilling to count the wife's income when a married couple applies for credit.

5. Women who are divorced or widowed have trouble re-establishing credit. Women who are separated have a particularly difficult time.

The practices which can result in discriminatory impact are many and varied. For example, the application forms themselves can be discriminatory—as in cases where the name of the applicant is asked for, followed by a second blank asking for name of wife, if married. The applicant is obviously expected to be male. Credit scoring systems, which are a technique for screening out potentially bad credit risks, also can have a negative impact on women. For example, after reviewing their good and bad accounts, divorce is often identified by lenders as a high risk characteristic. But the overwhelming number of accounts (or loans) have always been to men. So what really seems to be evident here is a propensity for divorced men to become delinquent. Divorced women pay the penalty, however, because it is they, typically, who have no prior credit record and are seeking new accounts, while divorced men frequently continue their old accounts unaffected.

It is clear that a problem exists; the dimensions of it are less clear. Research now underway utilizing data collected by the Survey Research Center of the University of Michigan should provide some answers.<sup>2</sup> Hearings on the bills now pending before the House Banking Subcommittee would contribute further to understanding the dynamics of sex discrimination in lending.

The President of the American Bankers Association, Eugene Adams, in a recent speech said "I think we have to acknowledge that banks, along with the rest of the credit industry, do in fact discriminate against women when it comes to granting credit. The question then becomes: is that discrimination justified?"<sup>3</sup> Mr. Adams should be commended for addressing the issue head-on and encouraging lenders to examine their assumptions about women.

#### ECONOMIC ISSUES

We share his view that it is crucial to understand why women are treated differently. We have been taking a hard look at a number of economic factors considered relevant to credit reliability.

There are generally two kinds of information which shed light on the credit-worthiness of women—they might be classified as direct and indirect evidence. The indirect information is that which deals with the economic stability of women—the labor force trends and other information not directly related to their performance as creditors. Direct information deals with the performance

<sup>1</sup> Among these organizations are the District of Columbia Commission on the Status of Women, the Pennsylvania Commission on the Status of Women, the National Organization for Women, the Women's Equity Action League, Parents Without Partners, the American Civil Liberties Union, Advocates for Women, the Citizen's Advisory Council on the Status of Women, the Women's Legal Defense Fund and many others. See "Women and Credit, A Listing of Activities in the Public and Private Sectors Relating to Women and Credit," Center for Women Policy Studies, Washington, D.C., 1973, for further information on activities in this field.

<sup>2</sup> Janet C. Goulet, "Availability of Credit To Women," doctoral dissertation for Department of Economics, Notre Dame University, in progress. The data base for this work is the national panel study data collected by the Survey Research Center, University of Michigan. The panel consists of 1,500 families representing a cross section of the population living in private households in the continental United States and was collected in January-February 1970.

<sup>3</sup> Eugene H. Adams, "Women and Credit," as reprinted in *The American Banker*, June 25, 1973.

of women as creditors—how the women fortunate enough to have received loans or credit cards have met their obligations.

There are some changes in the employment profile of women which deserve the attention of lenders. There has been a significant change in the employment status of women as a class, and it has come about during the lifetimes of the people who control credit policy. An influx of millions of women into the labor force occurred during the 1960's—with the most rapid increase coming from women who are married and have children.<sup>4</sup> This movement has not been tied to a major national emergency but to economic and social changes and thus should not be characterized as temporary. It is not yet clear how many more women will join the work force during the coming decade, but labor force projections indicate that the proportion of women who work will certainly be greater in 1980 than it is now.

Credit extenders often voice doubt over the permanence of women's employment. But the fact that most women work from economic necessity makes voluntary job leaving an unlikely luxury.<sup>5</sup> In fact, a study published in 1972 found that, in the manufacturing sector, the propensity of women to voluntarily leave their jobs has decreased considerably over the past decade. Historically, the fact that a high proportion of women were employed in an industry meant that that industry would have a high quit rate. But by 1965, this was no longer true—"as the relative proportion of women workers increased [in an industry] the quit rate decreased."<sup>6</sup> Available statistics on labor turnover also indicate that the net difference in turnover of men and women in the labor force is much smaller than the conventional wisdom would suggest.<sup>7</sup>

The available information on work-life expectancy of women is based on 1960 data, and therefore does not reflect the great changes of the last 13 years.<sup>8</sup> However, even this data shows that a married woman of 35 years, in the labor force after the birth of her last child, averages 24 more years of labor activity. For divorced, widowed, or single women the figures are higher, and knowledgeable economists have agreed that the length of working life for women in various age and marital groups has lengthened since the original research was done.

It would be useful to know what the current possibilities of employment are for women in various age and marital groups, and it is hoped that the Department of Labor will update the original study. But not having it is no excuse for not opening up credit to women. A great deal is already known about labor force activity and it is our conclusion that available information is sufficient to constitute a profile of the female labor force and is sufficient for purposes of forming credit policy.

Furthermore, tables of working life for women could be misused. It is useful to know, for example, that "X" percent of 30-year-old women with children under the age six are working and that the percent has been increasing steadily for over a decade. But, after all, this does not predict creditworthiness.

Ideally, credit should be extended to an individual as a result of the assessment of his or her qualifications as an individual. Because of the vast quantity of credit applications, some lenders have concluded that systems are needed for identifying potentially bad credit risks, and that these systems can be developed by looking at the personal characteristics of former customers who were delinquent or who defaulted.

The extension or withholding of credit is on the face of it a discriminatory process—some people get it and others don't. But the decisions should be based on the most realistic criteria available—criteria which have been developed from an assessment of bad accounts, not by eliminating people who, though qualified in other respects, belong to a group with labor force participation rates lower than their male counterparts.

When utilizing mathematical systems for identifying risk factors, lenders have not, as a rule, examined their good and bad accounts in terms of sex. There

<sup>4</sup> Their labor force participation rate is now 41 percent compared with 29 percent in 1960. (*1793 Manpower Report of the President*, Statistical Appendix.)

<sup>5</sup> U.S. Department of Labor, *Underutilization of Women Workers* (Washington, D.C.: Women's Bureau, U.S. Department of Labor), 1971, p. 1.

<sup>6</sup> Paul A. Armknecht and John F. Early, "Quits in Manufacturing: A Study of Their Causes," *Monthly Labor Review*, November 1972, p. 35. One of the reasons put forth for this change is the lamentable fact that women's voluntary job mobility is limited by sex discrimination in hiring.

<sup>7</sup> U.S. Department of Labor (Women's Bureau), *Facts About Women's Absenteeism and Labor Turnover* (Washington, D.C.: Government Printing Office, 1969), pp. 2-3 and 5.

<sup>8</sup> Stuart H. Garfinkle, "Work Life Expectancy and Training Needs of Women," *Manpower Report No. 12*, May 1967. U.S. Department of Labor.

is some evidence to suggest that if they did they would find that women, as a group, are unusually good credit risks. For example, a study in the mid-1960's which measured risk on installment credit found that for both married and single women, the bad account probability was substantially lower than for men with the same marital status.<sup>9</sup>

Similar results were reported by the director of an organization providing home improvement loans to elderly and low-income families. Many of the loans have gone to women who are heads of households. They as well as the other program beneficiaries were considered high risks and were therefore unable to get conventional financing. The program has a delinquency rate of only 4 percent; there have been no foreclosures. Most significantly, of the families headed by women, the delinquency rate is estimated as 2 percent. The program's director believes that female heads of families "demonstrate better fiscal responsibility than other households."<sup>10</sup>

In conducting our study, we have been identifying and interviewing lenders who have been "liberal" in granting credit to women. While few institutions have made the systematic review of their past accounts which would be definitive, some have concluded, on the basis of their low overall delinquency rates and normal monitoring processes, that women have been as creditworthy as men.

The first study to consider the determinants of credit risk—conducted in 1941 by David Durand—found that women are better credit risks than men, a fact which the author said "seemed puzzling to a number of credit executives." In the area of personal borrower characteristics Durand concluded "The classification of borrowers by sex and marital status indicate that women are better credit risks than men; and the superiority appears to be statistically significant. No significant difference, however, is evident between the risk characteristics of married and single persons." Durand also found that professional persons and clerical employees appear to be good risks. And clerical employees then, as now, were overwhelmingly female."<sup>11 12</sup>

Let us hope that as a result of research, local action, legislative efforts, and voluntary revision of credit practices, the puzzlement will soon cease. While our investigation of the economic justification for sex discrimination in credit practices is not yet complete, preliminary results lead us to believe that there is no justification for dealing with men and women differently in credit matters.

#### LEGAL ISSUES

In its report, the National Commission on Consumer Finance recommended "that states undertake an immediate and thorough review of the degree to which their laws inhibit the granting of credit to creditworthy women and amend them, where necessary, to assure that credit is not restricted because of a person's sex."<sup>13</sup> It singled out for investigation laws relating to alimony, support, dowry or curtesy, and statutes fixing a graduated rate ceiling on consumer credit transactions.

The Commissions on the Status of Women in a few states and the District of Columbia have done research to see what inhibitory effect their laws could be expected to have on the extension of credit to women. We at the Center

<sup>9</sup> Paul F. Smith, "Measuring Risk on Installment Credit," *Management Science*, Vol. II, No. 2 (Nov. 1964), pp. 327-340.

<sup>10</sup> Thomas A. Jones, Executive Director, Neighborhood Housing Services, Inc., private communication, April 18, 1973. More information on "high risk" borrowers should be forthcoming from a University of Pittsburgh study, "Factors Associated With or Contributing to Risk in Mortgage Lending Within Urban Areas."

<sup>11</sup> David Durand, *Risk Elements in Consumer Installment Financing* (New York: National Bureau of Economic Research, Technical Edition, 1941), p. 74.

<sup>12</sup> Two studies dealing with home mortgage delinquency and foreclosure are relevant to an analysis of sex as a determinant of risk, *Home Mortgage and Foreclosure* by John P. Herzog and James S. Earley (New York: National Bureau of Economic Research, 1971) found that marital status is unrelated to delinquency and foreclosure risk. Of the loan characteristics found to be related to credit risk, the loan to value ratio, the presence of junior financing, and loan purpose were clearly significant.

The only significant borrower characteristic was occupation, with professional persons, executives and managers showing the least delinquent behavior and self-employed persons and salesmen the most delinquent.

George von Furstenberg in *Technical Studies of Mortgage Default Risk: An Analysis of the Experience with FHA and VA Home Loans During the Decade 1957-66* (Ithaca, New York: Center for Urban Development Research, 1971) found that as the loan to value ratio rises, it becomes increasingly important as the predictor of default risk in mortgage loans. This may indicate that the payment to income ratio is not as important as has been thought, thus making it less valid to arbitrarily discount the working wives' income.

<sup>13</sup> National Commission on Consumer Finance, *Consumer Credit in the United States* (Washington, D.C.: Government Printing Office, December 1972), p. 153.

have looked into the law in 12 states<sup>14</sup> and expect that by the end of our grant period we will have firm conclusions as to the impact of state law on this problem.

Significantly, all the legal barriers which have been suggested to us pertain only to the attempts of married women who work to obtain credit in their own names. Because we believe that it is extremely important for all women to establish and maintain a credit history, we are researching several areas of the law to determine whether these apparent obstacles can be overcome. The following are our preliminary findings.

1. In some community property states a married woman has no control over community property, including her own earnings, so that unless she has "separate property,"<sup>15</sup> she may not be able to borrow money or obtain credit. Community property is a legal system which creates a kind of partnership between husband and wife in property acquired by either of them during marriage. Unlike the common law, it recognizes the contribution to the marriage of the wife who does not earn wages, and is usually advantageous to the woman when the marriage terminates. However, in its classic form it has the drawback of making the husband the sole manager of all community property, including a working wife's salary, so that during the marriage the wife is powerless to control her half of the property.

It seems clear that under recent Supreme Court decisions these laws, which still exist in Louisiana, New Mexico and Nevada, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment and are apt to be invalidated by the courts.<sup>16</sup> In the five other community property states (Arizona, California, Idaho, Texas and Washington), working wives should have no problem obtaining consumer credit based on property rights since the laws have been modified to give the married woman control over at least her own earnings.<sup>17</sup>

2. There is no real reason why a married woman in the 42 common law property states and the District of Columbia should be denied credit or loans on her own account. Under the old English system of common law, women were subjected upon marriage to certain legal disabilities<sup>18</sup> which resulted from a condition of marriage known as "coverture."<sup>19</sup> However, beginning in Mississippi in 1839, these disabilities were revoked by the enactment of Married Women's Acts in every state.<sup>20</sup> Therefore, there is no longer any legal impediment to the contrac-

<sup>14</sup> Alabama, Arizona, California, District of Columbia, Idaho, Louisiana, Nevada, New Mexico, New York, Pennsylvania, Texas, Washington.

<sup>15</sup> Separate property consists of assets required before marriage or after marriage by gift, bequest, devise or descent.

<sup>16</sup> *Reed v. Reed*, 404 U.S. 71 (1971). The Court said that a statute giving mandatory preference to males over females without regard to their individual qualifications violated the Equal Protection Clause of the Fourteenth Amendment. See also *Frontiero v. Laird*, — U.S. — (1973).

<sup>17</sup> In California and Idaho a wife may control her own earnings so long as they do not become commingled with community property, in which case the husband is manager. In 1968 Texas took its law a step closer to equity by giving each partner the power to obligate his or her own earnings and joint management of the community property. In the past year Arizona and Washington State revised their codes in a way which may pass constitutional muster. Spouses have joint control of community property, which includes the earnings of both. This system is fairer to women because it does not penalize them on account of their wages being generally lower than men's and because it is usually the wife who performs the unpaid work in the home.

<sup>18</sup> A single woman could contract with others, sue and be sued, manage and control her lands and personal property, reduce her choses in action to possession, retain the proceeds for her own use, and keep any other earnings that might come her way. When she married, however, she lost all these rights and gained instead the obligation of her husband to support her. Kanowitz, *Women and the Law*, University of New Mexico Press, 1969, p. 35.

<sup>19</sup> "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband under whose wing, protection and cover she performs everything; . . . and her condition during her marriage is called her coverture." Blackstone, *Commentaries*, p. 433.

<sup>20</sup> A typical statute reads: 1. A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment, and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to exercise all powers and enjoy all rights in respect thereto, and in respect to her contracts, and be liable on such contracts, as if she were unmarried. 2. All sums that may be recovered in actions or special proceeds by a married woman to recover damages to her person, estate or character shall be the separate property of the wife. 3. A judgment for or against a married woman may be rendered and enforced in a court of record, or not of record, as if she was single. A married woman may not confess a judgment. New York General Obligation Law, §3-301.

tual or property control powers of married women which would affect their credit eligibility.<sup>21</sup>

3. State laws requiring that husbands support their wives do not inhibit the extension of credit to a married woman upon her own account, so long as she has sufficient income or other assets. Where it is clear that a woman has undertaken the obligation to pay, she will be held primarily liable, unless the items purchased are found by the court to be "necessaries," in which case the creditor will be able to collect from her husband.<sup>22</sup>

The law of necessities was developed to permit the wife who was financially dependent upon her husband to buy what she needed for herself and her family without the express consent of her husband. It also operated to protect the creditor from the husband's refusal to pay. Nevertheless, since necessities were defined by the courts to cover anything from food to fur coats, depending upon the standard of living of the family as determined by the husband, creditors could not be certain that the court would agree the purchased goods were necessities. Further, in most states the husband could not be held liable if he had already provided the necessities or the money to purchase them.<sup>23</sup>

As a consequence, creditors have obtained in 23 states<sup>24</sup> laws which are called Family Expense Acts. Generally, they make it possible for the creditor to seek payment from either husband or wife for "family expenses," regardless of which spouse made the purchase. In these states, at least, it is clear that the law does not prevent a creditor from collecting from a married woman those debts which she has undertaken to pay, as well as family expenses which her husband has charged.

Very few cases involving creditors' rights and support obligations laws have been reported in the past several decades. This may be because small claims cases are not reported or because creditors do not consider it worthwhile to litigate such cases.

4. Although the specific issue has not been litigated, it does not appear that a creditor who opens separate credit accounts for a husband and wife will be held to have violated a state's usury law. It has been suggested that a violation of law could come about when the total dollar amount owed to a creditor by spouses with separate accounts exceeds that level at which the rate of finance charge decreases. If the husband, because of his duty to support his wife, is forced to assume her indebtedness, he will ultimately pay a higher finance charge than he would have, had all the purchases been charged to one account. It seems likely, however, that where the wife has demonstrated the ability and willingness to maintain her own account, a court would not hold her husband liable for her debts. In addition, there is little chance that creditors would be held to have violated the law so long as the couple had been fully informed that they might incur higher finance charges. As the National Commission on Consumer Finance said in its report, "It seems reasonable to permit a husband and wife to have separate accounts if they wish and if they are provided with a full disclosure of the possible added costs."<sup>25</sup>

#### REMEDIES

Our preliminary conclusion then is that the legal barriers to equal access to credit for women are few and of limited application. The problem appears to be one of "de facto" rather than "de jure" discrimination and the solution may be more complicated than the National Commission on Consumer Finance predicted. We believe that action is required in at least three areas—the Congress, the public and the industry.

1. The Congress should hold hearings to determine whether federal legislation is needed and, if so, how it should be enforced.<sup>26</sup> There are a few theories listed below upon which a legal remedy could be fashioned without specific federal legislation but since none of them has been utilized we can only speculate as to their efficacy.

<sup>21</sup> Because we are not here discussing mortgages, it is not necessary to explore the effect of *dower*, *curtesy* and a spouse's forced share upon the acquisition of financing of purchases of real property.

<sup>22</sup> Homer H. Clark, Jr., *Law of Domestic Relations*, 1968, pp. 189-190.

<sup>23</sup> *Ibid.*, p. 191.

<sup>24</sup> III Vernier, *American Family Laws*, Sec. 160 (1935).

<sup>25</sup> National Commission on Consumer Finance, *supra*, p. 135.

<sup>26</sup> A number of bills aimed at sex discrimination in consumer credit have been introduced in both the Senate and the House of Representatives. A Senate compromise bill was approved in committee last week. Like most of the other bills it is an amendment to the Truth in Lending Act.

(a) *Litigation has been contemplated based on the Fourteenth Amendment Equal Protection Clause*, but such a suit raises the threshold problem of proving "state action,"<sup>27</sup> which may be found to be present in government regulation of lending institutions but may be difficult to establish in the case of other businesses. If that requirement were met, the outcome of the suit would then depend on whether the courts would apply the "suspect classification"<sup>28</sup> test, an active standard of review similar to that which can be expected to be employed under the Equal Rights Amendment.<sup>29</sup> It is unclear whether a majority of the Supreme Court will invoke the suspect classification test while the ERA is pending before the states.<sup>30</sup> Other tests employed by the courts in equal protection cases would not insure the success of such a suit.

(b) *Litigation under state statutes should be simpler than the Constitutional approach* but to our knowledge no such challenge has reached the courts. The reason for this may be that most of the legislation prohibiting sex discrimination by creditors is very recent.<sup>31</sup>

(c) *The Federal Trade Commission could provide a federal administrative remedy*. It is certainly arguable that it is an "unfair trade practice" within the meaning of Section 5 of the Federal Trade Commission Act to deny women equal access to credit.<sup>32</sup> It now appears that the Commission has rulemaking power<sup>33</sup> to prohibit credit discrimination in commerce, although its authority under the Act does not extend to the regulation of banks.

(d) *The federal agencies which regulate lending institutions have been petitioned over the past year and a half to employ their rulemaking power to outlaw sex discrimination*.<sup>34</sup> The response has been to question whether there is authority in the regulatory bodies to address the problems of sex discrimination since there has been no Congressional mandate of the kind which exists, for example, as Steve has said, in the case of race discrimination in housing.

2. Secondly, important education and action is needed in the public sector. More women must be convinced of the importance of establishing a credit record and maintaining it throughout life as a necessary step toward becoming an independent economic entity. When they realize this necessity, they should be urged to bring pressure to bear upon lenders and businesses at the local level.

<sup>27</sup> The Fourteenth Amendment prohibits states from denying equal protection of the laws. This has been broadly construed by the Supreme Court to include various forms of governmental involvement in private discrimination. (See *Burton v. Wilmington Parking Authority*, 356 U.S. 715, 722 (1961).) *Contra* *Moose Lodge*.

<sup>28</sup> "Sex like race and lineage is an immutable trait, a status into which the class members are locked by accident of birth. What differentiates sex from nonsuspect statutes, such as intelligence or physical disability, and aligns it with suspect classifications is that the characteristic frequently bears no relation to the ability to perform or contribute to society." *Sail'er Im. v. Kirby*, 5 Cal. 3d 1, 18, 485 P. 2d 529, 539 (1971).

<sup>29</sup> Brown, Emerson, Falk and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 *Yale L.J.* 871, 905 (1971). It should be noted that application of the ERA will also be limited to situations in which state action can be found.

<sup>30</sup> In *Frontiero v. Richardson*, — U.S. — (1973) four Justices of the U.S. Supreme Court employed this standard of review in a sex discrimination case. A fifth Justice whose concurrence in the application of the "suspect classification" test would have created a majority opinion of precedential value, declined to do so. He felt that such active review will be the result of the Equal Rights Amendment, now before the states for ratification, and that for the Court to apply this rule would breach the Constitutional principle of the separation of powers.

<sup>31</sup> The following 12 states have passed legislation prohibiting sex discrimination in mortgage loans: Colorado, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania and South Dakota. Fewer states have passed more comprehensive legislation covering all forms of sex credit discrimination. In 1972 and 1973 the following 9 states adopted such legislation: 1972, Alaska; 1973, Colorado, Connecticut, Maryland, Minnesota, New Mexico, New York, South Dakota, and Washington.

The following is a list of 11 states which have had comprehensive anti-sex discrimination credit bills introduced in their legislatures in 1973. Most of these bills have not yet been acted on although a few may have been recently passed: Massachusetts, Michigan, California, Florida, Georgia, New Jersey, Ohio, Oregon, Texas, Wisconsin and Rhode Island.

<sup>32</sup> See criteria for the determination of "unfairness in Statement of Bases and Purpose of Trade Regulation Rule 408," 29 *Fed. Reg.* 8324, 8355 (1964).

<sup>33</sup> See *National Petroleum Refiners Assoc. v. F.T.C.*, — F. 2d. — (D.C. Cir. 1973).

<sup>34</sup> In February and March 1972 the Center for National Policy Review filed comments with agencies which regulate lending institutions (Home Loan Bank Board, Federal Reserve Board, Federal Deposit Insurance Corporation, Comptroller), on behalf of over 30 civil rights and public interest groups, arguing that these agencies have authority under the Constitution and the Housing Act of 1949 to promulgate regulations prohibiting sex discrimination. The Center for Public Interest Representation has also petitioned the Federal Reserve Board.

Written complaints to the offending businesses are important because they let the creditor know the specific practices which are offensive and why.

3. Segments of the credit industry are already disposed to review and rethink their credit criteria, revise their practices as well as their policies and to use the data within their control, to develop credit criteria which are valid and nondiscriminatory as applied to women.

In accomplishing this, more research should be undertaken utilizing the data peculiarly within the grasp of the industry—the data on performances of past accounts. Two caveats are important here. First, sex bias must be eliminated from the methodology in this sort of research as well as in the credit scoring systems. Secondly, the research should cover a large enough sample to provide significant findings. (We do not encourage a small retailer to look at a few bad accounts and draw conclusion from them.)

The credit industry can be expected to deny the need for legislation. They are correct in pointing out that it is in the interest of lenders and merchants to do business with the most reliable borrowers or purchasers without regard to sex. Dr. Barbara Bergmann, who testified here before, a noted scholar on the economics of discrimination, has pointed out that “. . . discrimination does not by and large serve the economic ends of those who do the discriminating. The financial gains to those who do the discriminating are low or negative.”<sup>85</sup>

Laws serve their purpose in the resolution of conflicting interests. In this case the economic interests of women and creditors are complementary, not conflicting. The parties perceive themselves as adversaries because they differ as to what is and is not a reasonable way to decide whether a woman is credit-worthy. During the remainder of our grant period we will work, hopefully with the help of the credit industry, to develop the information which is needed to make this determination.

Representative GRIFFITHS. I want to thank all of you. Your statements were really excellent.

I would like to ask you, Mr. Denenberg, where did you get your statistics on women's disability?

Mr. DENENBERG. You mean the rates for disability?

Representative GRIFFITHS. Yes. Where did you—from the insurance industry on the two and a half times disability?

Mr. DENENBERG. Yes. We have been working to gather disability statistics from the industry. There is a lot of litigation going on right now. We are also trying to eliminate this problem. They have a lot of statistics.

Of course, I should say insurance companies cannot make the rates on National Public Health statistics. The insurance companies make rates on the insured population and that experience may be different. But we think that it is pretty clear that many companies are justified in charging women more for disability coverage. It is clear that even without pregnancy, the losses are much greater for women.

Representative GRIFFITHS. But where did you find that out?

Mr. DENENBERG. We just asked the companies for their experiences. They came in and produced them.

Representative GRIFFITHS. I will have to tell you, I wouldn't ask the companies. I would run a separate survey because I don't believe them. A survey was run in Michigan some years ago on the number of days off that women in the civil service took and they discovered that women under 30 probably took one day more a year than men, but once they had passed 30 years of age, women no longer were disabled at all. But with men, you had those long periods where they had heart attacks—

Mr. DENENBERG. I am not feeling well myself right now.

<sup>85</sup> Barbara Bergmann, "The Economics of Women's Liberation," proceedings of the Amer. Psychological Assoc., Sept. 1971, p. 8.

Representative GRIFFITHS. Much more disability for men. So I personally feel that any statement that says a woman is experiencing two and a half times the disability of a man is highly prejudicial statement without facts to back it up at all.

Mr. DENENBERG. Let me assure you I will be the last to rush to the defense of the industry.

Representative GRIFFITHS. I know you will.

Mr. DENENBERG. And also let me assure you I will be the last to believe the insurance industry if I have any suspicions, but I do think it is clear that their statistics are valid. I mean they are audited and they are examined and we can have some degree of reliance on their statistics. As I said, first of all you have to remember that it is not how many disabilities there are. It is the number of disabilities plus the duration of each and secondly it is that insured population and, of course, you have to remember that you can get a study that shows almost anything in the disability field. In other words, you have, you know, 208 million people out there and you can survey them in different ways and it is actually conceivable and it is a fact that different insurance companies are going to come up with a different experience.

I think one of the things we really have to do is to decide how committed we are to equality of rates because in the present system I doubt that you are going to get complete and perfect equality as long as there are these actual differences.

I will say this. When they pass your National Health Insurance bill that will eliminate all the problems as far as maternity coverage—

Representative GRIFFITHS. Yes. When that happens. It will be very great, but I personally—if the insurance companies can really prove anything like that, I would advise them to fire every salesman they have because they are selecting the wrong people. They ought to open up the field and let other people in because I think there is something seriously wrong with that.

Would you care to comment, Mrs. Shack?

Mrs. SHACK. Well, I pointed to a study that was done and it was reported in the Society of Actuaries' publication in 1971 of 13 large insurance companies contributing experiences.

Now, it is true that they used—the table begins with a 3-month elimination period but with the 3-month elimination period there was almost no difference between the men and the women that were collecting disability benefits. Their own studies contributed to that experience. So something is fishy and it is difficult—we don't have access to that information to examine it.

Mr. DENENBERG. I might just go back to say again I don't want to sound like I am defending the industry but it is true that the male pays substantially more. You take the age 23, a male for automobile insurance will be paying \$858 while a female will be paying \$411.

Representative GRIFFITHS. May I ask you if she is divorced what will she be paying?

Mr. DENENBERG. Well, actually divorce does not effect the rate structure. There is no rating structure for divorce. In fact, a single woman gets a lower rate past 30 if she is a single woman living alone. However, there may be underwriting prejudice against women. In other words, the company will sit there and they—

Representative GRIFFITHS. They won't sell her a policy.

Mr. DENENBERG. They may not. The underwriting can be a very irrational policy, as I say, especially on automobile insurance where the underwriter is going to figure out what kind of witness that person is going to make. It can cost you when you have a nickname or you are of a minority group. We reviewed the manuals of one company and found it would not insure 80 percent of the population. The best you can do with that is go through the underwriting manuals and make them take the stuff out. So it may be that some underwriter will assume that divorced women will not make a good witness. The answer to that is pass no-fault and change our automobile insurance system to a system that does not depend on lawsuits and that will eliminate a lot of the problem. I hope Congress will do that quickly.

Representative GRIFFITHS. I hope so, too.

May I ask you, point out to you, I talked with one of those women who is a director of the top five insurance companies one night and I asked her if she were aware that her company in a case such as this would not sell insurance.

A couple bought a house in my district. They made about an equal sum, which entitled them to buy the house, and the man all at once thought, well, you know, if I died, my wife wouldn't be able to pay for this house, so I will buy an insurance policy that covers it, and that company sold him the policy. So the wife said, well, what would you do if I died? So I will buy a policy. They wouldn't sell her the policy.

Now, you know, this in my opinion is the height of idiocy because any insurance company should have known from their own statistics that that woman was going to outlive that man by years. They were really going to be collecting two premiums on the same contingency: his death.

Mr. DENENBERG. I would agree that is idiocy and I really don't think any woman would have trouble getting life insurance. The market on life insurance is very good and unless there are some unusual circumstances, most people—

Representative GRIFFITHS. Oh, yes.

Mr. DENENBERG [continuing]. Have to fight off salesmen.

Representative GRIFFITHS. They wouldn't sell it to her. The husband bought a policy that would pay for the house completely.

Mr. DENENBERG. Was she in good physical health?

Representative GRIFFITHS. She is a nurse. Perfect health.

Mr. DENENBERG. There are 1,800 life insurance companies in the business and they are very hungry for the business.

Representative GRIFFITHS. She went out someplace else but this was one of the big five that wouldn't sell it to her. Absolutely incredible. Part of this is just poor business judgment on the part of the insurance companies in my opinion.

Mrs. SHACK. I had a similar experience.

Mr. DENENBERG. I agree. I think they have been very slow to react to modern times. They rarely come up with ideas of their own. They have to be pushed and prodded. I am confident the work of this committee will probably push them in the right direction.

Representative GRIFFITHS. I hope so.

You mention in your statement the public policy is now protecting blacks. Of course, that public policy was really created by law in

the beginning and that is really what we seek to do for women. We need laws that help create the public policy.

Now, one of the things that has impressed me is that in each day of the hearings, there has been somebody who has pointed out that what you have to have in some of these places are women in policy-making positions, because they are presenting a different view than the men who have heretofore been running it. You not only have to have women in those positions—they have to have been women who have been subjected to some of these discriminations, or their friends or their family have been subjected, and they know about them. You can't wait until she gets to be a director of the biggest insurance company in the world to find out that that insurance company is not selling policies to women. She has got to know something about it before she starts.

Mr. DENENBERG. We certainly agree. All of our experience in the past has indicated if you want the reform of the system, whether you are talking about Blue Shield-Blue Cross, health delivery insurance, you have to restructure the boards. They are basically not representative of the communities and this is why they come up with some of these unresponsive policies, I think.

Representative GRIFFITHS. Mr. Rohde, when a husband's income is insufficient by itself to cover a mortgage, how often is the wife asked about her childbearing ability or her birth control practice?

Mr. ROHDE. Well, quite often, although most of the specific type of problems where, for example, women have been asked to submit affidavits stating what their birth control plans have been, have been in connection with VA loans. And there have been numerous reports from a number of cities about cases where lenders said that the only way a woman could get her income counted was if she submitted an affidavit stating she was on birth control and stating she would continue to be on birth control and not have children.

I think in the conventional mortgage market, a lot of lenders just assume if she is at childbearing age she is just going to get pregnant and will quit work, so they may not even bother to ask her about it. It is just an assumption that that is her function in life, is to have babies and not to work, and that she couldn't do both.

Now, VA did in February issue a statement saying they did not condone the practice of asking for birth control affidavits, but as I indicated from that quote I gave from the VA loan official in Cleveland, which was a quote that was made on June 18, some months after this VA February bulletin, there is no indication that even that bulletin has been translated into changed policy at the field stations.

Representative GRIFFITHS. What does VA do for the women veteran? Are their policies any different for the woman veteran and the wife?

Mr. ROHDE. I think there is discrimination in both cases. As a matter of fact, I know of one very specific case in Florida. A woman by the name of Cherie Maxine Johnson, who was a veteran—her husband was also a veteran—they applied for a VA loan. This was I think in the fall of 1971. And even though she had one child who was 8 years old—Mrs. Johnson had worked continuously for 13 years with only 2 months' maternity leave when she gave birth to that one child—and yet the mortgage lender refused to count her income be-

cause she wouldn't sign one of those birth control affidavits promising to stay on birth control. So she didn't get the loan.

This is a case where she and her husband were both veterans. So it doesn't seem to be any different.

Representative GRIFFITHS. I think you have been far too good to the FHA because I have heard all kinds of horror stories about what the FHA does. I was on one of those talk shows with somebody in radio in Philadelphia one day, and finally a real estate salesman could stand it no longer because I mentioned that it was a little difficult to get credit if you are a woman. He came on and said any woman in Philadelphia could get credit to buy a home, and I said, Well, is this true for a young married woman? Do you count all of her salary? Well, no, they didn't; not all of her salary. And I said, Well, are there any other requirements? Is there anything else that she has to say or do. Well, all she has to do is provide in writing her method of birth control signed by her doctor.

It was incredible. These were FHA and conventional mortgages.

Now, of course, you must be aware that a subcommittee of the Banking and Currency Committee has put into H.R. 8879 a requirement that the FHA not discriminate on the basis of sex. It is now before the full committee. So I hope that at least in FHA there will be some improvement. Miss Chapman, do you know of any definitive studies that have examined sex as a variable in credit worthiness?

Miss CHAPMAN. We have identified several studies that have examined sex. I would not consider they are definitive but they are valid to the extent that they can be used.

Representative GRIFFITHS. What evidence is there that women are better, worse, or the same credit risks as men?

Miss CHAPMAN. Well, I would mention that the three studies to which I am referring found that women were in fact better credit risks than men, and the author of one of these studies mentioned that when he presented his findings to credit executives, they found this to be quite a puzzling fact.

Representative GRIFFITHS. Quite puzzling. They haven't really been trying to give any credit to women. But as long as there are no studies which show that women are not as good risks, then on what in the world are the credit companies basing their refusal to give women credit?

Miss CHAPMAN. We can only conclude that it is based on outmoded views of women's roles.

Representative GRIFFITHS. Now, you referred to the community property States. According to some statistics that are available for the Small Business Administration, only 1 percent of their loans are made to women. I know of several instances where women were denied SBA loans for no apparently justifiable reason. The only explanation seems to be discrimination.

There is, however, a case in Louisiana where the husband defaulted on an SBA loan and to insure payments, his wife's salary was garnished. So that it seems that the reliability of a wife's earnings is flexible depending on the convenience of the lending institution. Wouldn't that be right?

Miss CHAPMAN. Yes. It would appear that way.

Representative GRIFFITHS. Even to the SBA. They didn't mind the fact that they could pick up her earnings to pay the bill.

Do any of you have any other evidence of sex discrimination?

Miss GATES. I would like to make a comment on your last remark. In all fairness I think it is well to remember that Louisiana is a community property State and one of the three remaining community property States in which a woman cannot even control her own earnings. Her own earnings and wages become a part of the community property which her husband alone may control.

I think that in the situation you just described what may have happened, since there was no other community property, the SBA went against the woman. I think that women should give serious attention to the change of property laws in these three States. I believe they are patently unconstitutional under *Reed vs. Reed*, and other recent Supreme Court decisions. There is a perfect analogy between this kind of law and the Idaho law which the Supreme Court ruled unconstitutional.

Representative GRIFFITHS. But they have tried case after case in Louisiana. Louisiana has the worst cases that have ever come before the Supreme Court. In one of those cases a wife seeking separate maintenance was told she didn't have a right to the accounting of the property. Three years later the wife who had been divorced for 5 years and who inherited her parents' property, had the IRS reach in and take the whole thing because her husband hadn't filed an income tax return. So Louisiana has some of the worst of all cases.

Have any of you any evidence of discrimination on the part of SBA?

Miss CHAPMAN. The SBA by and large has not collected its data broken down by sex, so this presents a great barrier.

Representative GRIFFITHS. This is really true of all these agencies and all lending institutions, isn't it?

Miss CHAPMAN. It is.

Representative GRIFFITHS. And how about insurance companies? Theirs would be broken down by sex, wouldn't they?

Mr. DENENBERG. Yes, they are.

Representative GRIFFITHS. Yes, they would be broken down by sex but all the lending agencies should be required to keep it by sex. It would be extremely helpful.

Miss CHAPMAN. It would be helpful if all Federal agencies collected it by sex.

Representative GRIFFITHS. Yes.

In considering legislation should Congress specify that the Federal Reserve Board issue standard regulations to enforce legislation banning discrimination on the basis of sex or marital status or would it be better for each Federal regulatory agency to write its own regulations?

Miss GATES. Well, our field of expertise is not legislation but this question was considered during the past week in some circles because of the Senate compromise bill which was recently approved in committee.

It seems to me that there would be a great deal of confusion if rules were issued by a number of agencies having to do with similar sets of circumstances. I think that the question of marital status, because of

its interrelationship with State laws, presents sufficient difficulties that it would be simpler to have one agency making regulations—although I bet you are straining at the leash, Mr. Rohde, to say that the Fed has certainly not met its obligations to promulgate regulations under the Fair Housing Act.

Mr. ROHDE. If I could comment on that, yes. The Fed has been the least responsive I think of all the agencies under the Fair Housing Act in promulgating regulations to enforce the civil rights laws prohibiting discrimination against racial minorities, so I am a little concerned about that.

Also if I can make a distinction between consumer credit and mortgage credit, I think it would be a lot more logical for an agency such as the Federal Home Loan Bank Board which is an agency which has specific expertise in mortgage financing, to be the agency charged with promulgating standard regulations for mortgage lending because that is what their expertise is.

Now, the Home Loan Bank Board does not get involved very much in consumer credit because the only thing savings and loans do by and large is make consumer loans. There you might need some other agency that might be more appropriate.

I am still concerned about the Fed because of their lack of responsiveness.

Representative GRIFFITHS. Well, the Fed apparently is responsible only to God. I have always been surprised that they don't stockpile their own nuclear weapons.

Because of the importance of gaining a college education, women's access to student loans is a crucial issue. Have you found evidence of discrimination against women in obtaining student loans? Mrs. Shack, has anybody written you?

Mrs. SHACK. We had an interesting situation in New York which is kind of a twist on it. In New York a woman who followed her husband with a New York loan through an educational institution out of the State found that she was considered a resident of New York State even though they were living out of the State for many years. It is not a direct answer to your question. By following him to Louisiana, or wherever it was, she had lost her right to vote in New York. She had relinquished her residency. Her residency was the residency of her husband. But I really haven't had other direct experience with that.

Representative GRIFFITHS. Yes, Miss Chapman.

Miss CHAPMAN. We have uncovered some evidence of discrimination. Again it has been difficult, because the statistics are only occasionally kept by sex. But in the guaranteed student loan program in 1967, for example, when you look at the data by State there is great disparity in some of the States in the numbers of loans that go to women. In Utah, I think almost 80 percent of the loans went to men and only 21 percent to women.

Representative GRIFFITHS. Do you think that any of the civil rights laws or the Constitution could be read to keep tax exempt foundations from making grants to groups and institutions which discriminate against women?

Mr. ROHDE. I don't think I am really competent to comment on that question.

Representative GRIFFITHS. Well, would you all think about it?

Miss GATES. I would like to think about it. I have the initial reaction that they don't.

Representative GRIFFITHS. Well, do you think there should be such a law?

Miss GATES. I definitely think there should be such a law.

Representative GRIFFITHS. Nice tax-exempt money.

Mr. ROHDE. I would agree with that, too.

Representative GRIFFITHS. The Federal Trade Commission has administrative enforcement responsibilities for more than a million creditors under the Truth in Lending Act. If the Truth in Lending Act were amended to prohibit credit discrimination by sex, do you think this would pose a potential problem of enforcement?

Mr. ROHDE. I am not sure what you mean by—there is always a problem of enforcement.

Representative GRIFFITHS. Well, do you think it would be an insurmountable problem or do you think—

Mr. ROHDE. No.

Representative GRIFFITHS [continuing]. This would be one quick way to announce that from here on credit is going to be available to everybody.

Mr. ROHDE. I think obviously that would be very helpful and particularly in the area of mortgage credit I think there is a tremendous opportunity to do something about it if you can get the agencies which supervise the institutions to use their examination process in the enforcement process and I think that would be implicit in that law.

Representative GRIFFITHS. Would the combination of review by the FTC, bad publicity, and the threat of civil action be sufficient to keep in line those creditors within the jurisdiction of the FTC?

Miss GATES. I think that it is going to be very hard to tell, how hard it will be to keep these people in line. I think that the barrage of remedies you mentioned would be most welcome, but I also think, as we pointed out in our prepared statement, that there has to be some change coming from within the credit industry because the enforcement problem is just insurmountable.

Representative GRIFFITHS. I think that is right.

I would like to thank all of you and I would like particularly to thank you, Mr. Denenberg, and to wish you success on your endeavor to create insurance that really is fair to women, and I urge you again to question the insurance companies' statistics.

Thanks to all of you.

Miss GATES. Thank you.

Representative GRIFFITHS. This committee will recess until 10 o'clock Tuesday morning, July 24.

[Whereupon, at 11:30 a.m., the committee recessed, to reconvene at 10 a.m., Tuesday, July 24, 1973.]

[The following letters were subsequently supplied for the record:]

CONGRESS OF THE UNITED STATES,  
JOINT ECONOMIC COMMITTEE,  
Washington, D.C., August 1, 1973.

HON. HERBERT S. DENENBERG,  
*Commissioner of Insurance, State of Pennsylvania, Finance Building, Harrisburg, Pa.*

DEAR MR. DENENBERG, The Committee would appreciate your response to the following questions to be placed in the record of the July 12, 1973, hearing on economic problems of women:

1. Many insurance companies require extra premiums, called loadings, for group coverage for health and disability insurance if 50% or more of the group are married females. What justification is there for this? If this is based on actuarial statistics, do you think it is fair for insurance companies to treat all women differently from all men because of these statistics? In a sense, aren't actuarial statistics like group stereotypes, which may or may not fit the individual?

2. Last year the Equal Employment Opportunity Commission issued regulations prohibiting sex discrimination in the provision of fringe benefits to employees. It required that maternity leave of reasonable length be provided and that maternity benefits be available as a part of total health benefits. What impact has this regulation had on group policies? Given the EEOC's poor performance thus far in employment discrimination cases, what prospect is there that the regulation on fringe benefits will be an effective tool for women?

3. The McCarran-Ferguson Act of 1945 specifically exempted insurance companies from federal regulation and left regulation entirely in state hands. Would you suggest that Congress consider amending the McCarran-Ferguson Act? If not, what effort can be made at the national level to correct sex discrimination in insurance?

4. In your book you suggest that one should shop around for insurance. Women are not generally approached by insurance agents and therefore have to make more of an effort to become familiar with different insurance policies. In light of the fact that testimony before Senator Hart's Subcommittee last year revealed that voluntary applicants for insurance are viewed suspiciously, what kind of advice would you give to women who have no access to group insurance and do not have agents call upon them?

5. When a husband and wife try to buy life insurance based on their combined incomes, sometimes the insurance company will discount all or part of the wife's income. How common is this practice? Is this practice based on the idea that if the wife has a child and stops working, the couple won't be able to pay the insurance premiums? Do you know of any evidence showing that married couples tend to stop paying their premiums when the wife bears children?

6. When a married couple buys insurance, how often is it in the name of the husband alone? In the name of the wife alone? In both names? When an insurance policy is in the names of both husband and wife and they become divorced, who keeps the policy?

7. Approximately how many employment-related group health insurance policies cover maternity? Of these, how many provide maternity coverage for *either* female employees *or* wives of male employees, but not both? What is the approximate percentage difference in cost between health insurance coverage that includes care for pregnancy and childbirth and that which does not?

We would appreciate a reply to these questions at your earliest convenience so that the hearing record can be printed. Thank you.

Sincerely,

MARTHA W. GRIFFITHS,  
*Member of Congress.*

COMMONWEALTH OF PENNSYLVANIA,  
INSURANCE DEPARTMENT,  
*Harrisburg, September 6, 1973.*

HON. MARTHA GRIFFITHS,  
*Longworth House Office Building,  
Washington, D.C.*

DEAR CONGRESSWOMAN GRIFFITHS: In addition to my testimony prepared for the Joint Economic Committee hearings on economic discrimination against women, the following responses to your questions of August 1, 1973, may be placed in the record:

1. Group health and disability insurance rates are affected by the "female content" of the group being rated, as well as by the mix of insurance benefits offered. Once the female content is used to determine the group rate, however, the premiums paid by group members are the same regardless of sex. Thus if a woman does cost more to insure, her costs are spread across the premiums of both men and women in the group. These loadings can have a negative effect on women's employment opportunities where employers pay all or a large part of the pre-

miums on their employees. Higher rates for heavily female groups may lead employers to keep the female proportion of the work force as low as possible.

Such group stereotypes, if accurate, are not unreasonable if company or inter-company experience data show that women insureds in group plans do utilize health and disability benefits more than men. At present, there is little raw data to prove or disprove the validity of such loadings. Some national data on the entire population—rather than the insured population—do tend to call into question substantial sex-based loadings. The Pennsylvania Insurance Department is pressing companies to provide more raw data so that an analysis can be made.

A strong national health insurance system would eliminate any differential impact on one sex or the other regardless of differential health care utilization.

2. Three sections of the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex (29 CFR 1604.1-1604.10, March 31, 1972) have an impact on insurance practices. These are sections 1604.4 (marital status), Section 1604.9 (fringe benefits), and 1604.10 (pregnancy and childbirth). These sections prohibit discrimination by employers covered under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, in providing group medical, hospital, accident, life and disability programs. Nevertheless, numerous complaints of continued discrimination have reached my office.

To widen the impact of these guidelines, the Pennsylvania Insurance Department is notifying all insurance companies writing group insurance in the Commonwealth of Pennsylvania about these guidelines and the contract limitations, restrictions, and riders which we consider unlawful. Companies are being asked to educate their agents and underwriting personnel who review group contracts about the guidelines. We hope that through this notice, insurance companies will persuade employers to bring their group insurance into line with federal sex discrimination guidelines. Other state insurance departments can take similar steps.

Women themselves must become aware of these guidelines and, through unions and women's organizations, demand that employers provide nondiscriminatory fringe benefits. Women's professional insurance groups should take a stand on this issue as well.

3. Three things would contribute substantially toward eliminating sex discrimination in insurance. One is ratification of the Equal Rights Amendment, thereby assuring women that such inequality of treatment goes against the United States Constitution. Second is passage of a good national health insurance bill, since women are hardest hit by discrimination in rates, coverage, and availability in health insurance. Third is reform of the Social Security laws to remove all sex discrimination, since these have an impact on private insurance plans at several points including retirement plans and disability insurance.

4. Women should not be afraid to shop around for insurance, despite the fact that agents do not call on them as frequently as on men. If male agents are suspicious, women should seek out female agents to assist them with their insurance needs. These women know and respect the size and value of the female insurance market.

5. Frequently the wife's income is listed under "other income" in a life insurance application and is evaluated by the home office. In addition to childbearing, companies could be afraid of divorce as a factor which would reduce the likelihood of premiums based on the joint income being met. I don't have any data on lapse rates in these cases, but the Pennsylvania Insurance Department has not found this to be a major complaint among women.

6. Within a family, agents report, the husband usually owns policies on his life and may or may not own a policy on his wife. Joint ownership is very common. Women may, but generally do not, own policies on their husbands. Divorce settlements determine which person gets the insurance policies. When policies have been owned by the husband, and he keeps them, the beneficiary can be changed, unless the settlement determines otherwise.

Women, particularly those with their own incomes, should consider buying and paying the premiums on the life insurance on their husbands.

7. It is difficult to assess how many of the 80,000 group hospitalization plans cover maternity expenses and for whom. One industry study sheds some light on what is happening with new group medical care policies. Of 3,610 cases over a three month period, 53 percent did not include maternity coverage at all; 0.8 percent covered the employee only, 44.6 percent covered employees and depend-

ents, and 1.6 percent covered dependents only. These data covered groups of all sizes; the larger group programs (100 or more employees) were more likely to include maternity coverage for employees and dependents or just dependents than were smaller groups. ("New Group Health Insurance Policies Issued in 1972, Complete Tables," Health Insurance Institute, New York mimeo, n.d. table 4 as corrected.)

Maternity coverage by number of employees apparently decreased between 1967 and 1972 in groups of 25 to 499 employees. In 1967, 73 percent of employees had some maternity coverage for themselves or spouses, while in 1972 this declined to 63 percent. The biggest drop was in coverage for spouses only: in 1967, 12 percent of the employees in groups with maternity benefits had this protection for spouses only; in 1972 spouses-only coverage was available to 4 percent of these employees. ("New Group Health Insurance, Part II, The Five Year Trend, 1967-1972," Health Insurance Institute, New York mimeo, n.d., p. 11.) These data may indicate that employers are dropping maternity coverage from spouses rather than extending such coverage to female employees in compliance with federal sex discrimination guidelines.

The cost difference for adding maternity benefits to a medical care insurance plan is affected by many factors. Nonprofit plans, such as Blue Cross and Blue Shield, generally include maternity benefits on all Family Plan contracts, and exclude these benefits from individual contracts. In Pennsylvania, the extra premium cost for a single woman to have maternity benefits through nongroup Blue Cross coverage would be two and one half times the single individual rate. This is because single individuals must enroll in the Family Plan to be eligible for such benefits.

One Pennsylvania Blue Cross association has quoted a \$0.25 per individual contract per month rate increase to add maternity benefits to individuals with group coverage. As this shows, adding maternity coverage on a group basis is much less expensive. In New Jersey, both Blue Cross and Blue Shield simply extended maternity benefits to single subscribers as part of an administrative liberalization of benefits which accompanied a general Blue Cross rate increase.

It is difficult to generalize about the percentage cost difference of adding maternity benefits to a medical care insurance program sold by a commercial company. Some companies will agree to add a specific flat maternity benefit to a group contract for an additional ten percent of the total cost, subject to revision after a year's experience. A precise calculation would be based on individual company underwriting practices, the age and sex mix of the specific group and its covered dependents, and the nature and size of the pregnancy-related coverage.

I hope these responses will further clarify insurance practices affecting women. If I can provide additional information, please call me at any time.

Sincerely,

HERBERT S. DENENBERG.